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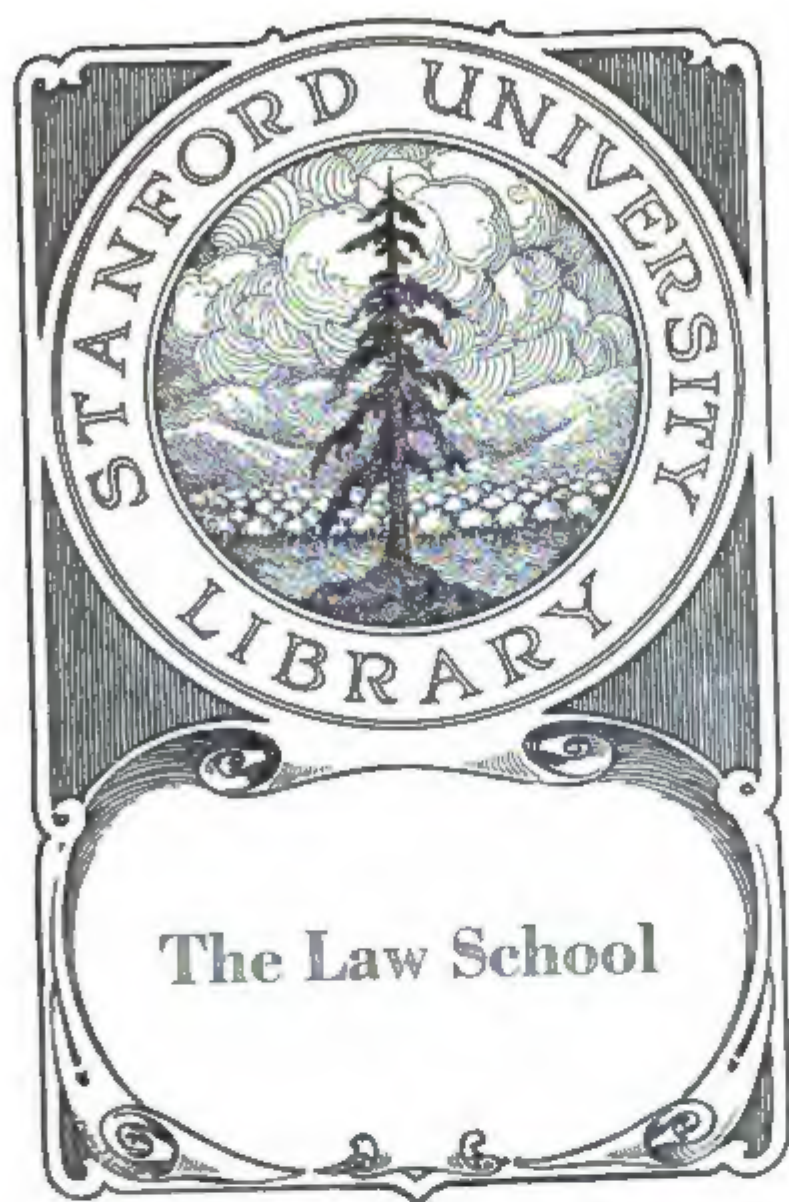
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ACTS

OF

THE GENERAL ASSEMBLY

OF THE

COMMONWEALTH OF KENTUCKY:

PASSED AT

NOVEMBER SESSION, 1850.

VOLUME I.

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L A W S O F K E N T U C K Y .

PASSED AT NOVEMBER SESSION, 1850.

JOHN L. HELM, GOVERNOR; BEN. EDWARDS GREY, SPEAKER OF THE SENATE, *pro tem.*; GEO. W. JOHNSTON, SPEAKER OF THE HOUSE OF REPRESENTATIVES; JOHN W. FINNELL, SECRETARY OF STATE.

GENERAL LAWS.

CHAPTER 1.

AN ACT to provide for running and marking the dividing line between the counties of Adair and Russell.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That an act, entitled, an act making provisions for the running and marking the lines of Lincoln, Casey, Pulaski, Russell, and Adair, and for other purposes, approved March 4, 1850, be and the same is hereby so amended as to make it the duty of the surveyors named in said act, or any three of them, to run and mark so much of the line between the counties of Adair and Russell as lies between the counties of Adair, Casey, and Russell, and the lane of Aaron Williams, deceased.

1850.

GEO. W. JOHNSTON,
Speaker of the House of Representatives.

BEN. EDWARDS GREY,
Speaker of the Senate, pro tem.

Approved November 18, 1850.

JOHN L. HELM.

By the Governor,

JOHN W. FINNELL, *Secretary of State.*

CHAPTER 6.

AN ACT to amend an act, entitled, an act to mark definitely the dividing lines between certain counties, approved February 27, 1849.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the third section of an act, entitled, "an act to mark definitely the dividing lines between certain counties," approved February 27, 1849, be and the same is hereby so amended, that instead of James McNeal, of the

Commissioners
appointed—their
duty.

1850.

county of Laurel, and Strother D. Mitchell, of the county of Montgomery, James Sparks, of the county of Laurel, and Nicholas Hadden, of the county of Montgomery, be and they are hereby appointed commissioners, to act in conjunction with Kiah Crooks, of the county of Madison, to do and perform all the duties of the former commissioners, as prescribed by said act; to be governed by the same law and receive for their services the same compensation as therein specified.

Approved November 18, 1850.

CHAPTER 10.

AN ACT to change the May term of the County Court of Shelby county.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That, hereafter, the May term of the county court for the county of Shelby shall be held on the first Monday in May, instead of the second Monday as now provided by law.

Approved November 18, 1850.

CHAPTER 18.

AN ACT to run and re-mark the dividing line between the counties of Campbell and Pendleton.

Commissioners appointed—their duty.

C'ty Courts to pay for services

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky, That Charles Riddle, of the county of Grant, and Elijah Yates, of the county of Kenton, be and they are hereby constituted and appointed commissioners to run and re-mark the dividing line between the counties of Campbell and Pendleton; and they are to be governed by the following points, courses, and distances, to-wit: beginning on the Ohio river, two miles below the mouth of Big Stepstone creek; thence in a direct line to main Licking river, as far below the main fork of Licking as it is from that point to the mouth of the north fork of Licking above the said forks; and to make out and return to the county court of each of said counties a report of said survey, setting forth therein what timber or other objects are called for in said survey, so made by them, at each corner; and they are hereby empowered to select and employ two chain-carriers, to whom they shall administer an oath faithfully to perform said service; and the said commissioners are authorized to make out an account for said services, which shall be allowed and levied by said courts, each county paying one-half the expenses of said survey.*

§ 2. All acts coming within the purview of this act are hereby repealed.

Approved November 22, 1850.

CHAPTER 20.

1850.

AN ACT to define the lines of Clay and Perry counties.

Whereas, an act, entitled, an act to attach part of Clay to Perry county, approved January 12, 1843, is vague and uncertain. Therefore,

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the line named in the above act shall call for the Saltpetre Gap, on the dividing ridge between Hell-for-certain and Bull creeks; thence a straight line to the nearest point of Bull creek; thence a straight line to the Still-house branch, one-fourth of a mile above its mouth; thence with said branch and the middle fork of Kentucky river, including Hiram Begley's residence in the county of Perry.

Approved November 22, 1850.

CHAPTER 24.

AN ACT for the benefit of the soldiers of the late war with England, &c.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That, hereafter, the several clerks in this commonwealth shall not be permitted to charge or receive any fee or tax for affixing the seal of office to any instrument of writing whatever, which may be necessary to perfect the testimonials of any officer or soldier in the late war with England, (1812,) or any war with the Indians since 1790, for services performed by him, for debts due him in land or money, or for property lost, captured, or destroyed during the continuance of said wars; nor shall said clerks be entitled to any fee for their services in such cases, but all such services shall be deemed *ex officio*, and said clerks shall perform them as heretofore required by law in reference to Revolutionary and Mexican war soldiers.

Clerks not to charge fees.

Approved November 23, 1850.

CHAPTER 27.

AN ACT to enable the Governor to carry into effect the provisions of the charter of the Southern Bank of Kentucky.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky,* That the governor be, and he is hereby directed to cause to be engraved and delivered to the president or cashier of the southern bank of Kentucky, in the payment of stock in said bank, subscribed for and on the part of the state, the bonds heretofore directed to be issued by the provisions of said charter, of the denomination of one thousand dollars each, in the following form:

Governor to cause bond to be engraved.

1850.

"STATE OF KENTUCKY,
United States of America.

Form of bond.

Be it known, that there is due from the commonwealth of Kentucky to ———, or order, one thousand dollars, lawful money of the United States of America, bearing an interest of six per cent., per annum, from the date hereof, payable semi-annually, on the first Mondays of January and July in each year, in Russellville, Kentucky, on the presentation and delivery of the dividend warrants hereto annexed, until the payment of the principal sum; which principal sum will be due and payable upon the presentation and delivery of this bond, at the principal bank of the southern bank of Kentucky, in the town of Russellville, Kentucky, and redeemable at the pleasure of the commonwealth, at any time within five years after the expiration of the charter of the said southern bank of Kentucky."

\$400 appropriated
for the pur-
pose.

§ 2. To enable the governor to carry into effect this and the several acts establishing said bank, he is authorized to use a plate now belonging to the state, and to have the same altered in accordance with the form herein prescribed; and to enable him to accomplish that, the sum of four hundred dollars is hereby appropriated to be paid on his order.

Approved November 29, 1850.

CHAPTER 30.

AN ACT for the benefit of the Clerks of the Circuit and County Courts of this Commonwealth.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That it shall be lawful for each and every circuit and county court clerk, who may have failed to execute, renew, and forward their bonds, by the time and in the manner prescribed by law, to comply with the provisions thereof at any time prior to the first Monday of April, 1851; and each circuit and county court clerk who shall so comply, by the time aforesaid, shall be exonerated and discharged from all the penalties now imposed by law because of such failure.

Approved November 29, 1850.

CHAPTER 39.

AN ACT appointing Commissioners to divide the Counties of this State into Districts, for the election of Justices of the Peace and Constables.

Commission-
ers to be appoint-
ed to district the
counties.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky,* That the following persons be and they are hereby appointed commissioners in the several counties in this state—a majority of whom shall be competent to act—to lay off their respective counties into districts, of convenient size, for the election of justices of the peace

and constables; and said commissioners shall receive for their services a reasonable compensation, to be allowed by the county court of each county, at their court of claims in 1851.

1850.

§ 2. The following commissioners are hereby appointed for the county of Adair: Hickman Pelly, S. B. Field, Nicholas Taylor, Joshua Hatcher, and Dory Nell, who shall divide said county into not less than four nor more than six districts.

Adair

For the county of Allen: John H. Page, Fletcher Gatewood, Nathan K. Pope, Henry Motley, sr., and R. H. Parris, who shall divide said county into five districts.

Allen

For the county of Anderson: Keeling C. Gaines, Dennis C. Driskill, Wesley J. Holman, Edward Sherwood, Darius Hackley, and James McBrayer, jr., who shall divide said county into not less than four nor more than five districts.

Anderson

For the county of Boyle: Robert Tilford, R. N. Bowling, Charles H. Rochester, R. P. Gregory, Dr. Ben. Mullins, and John R. Ford, who shall divide said county into not less than four nor more than six districts.

Boyle

For the county of Bracken: Elijah Bassett, John Burkett, and David Brooks, who shall divide said county into five districts.

Bracken

For the county of Bullitt: G. E. Rogers, John Holtzclaw, R. J. Stoner, and William Wilson, who shall divide said county into not less than three nor more than five districts.

Bullitt

For the county of Bourbon: Wm. Garth, Nathaniel P. Rogers, Peter Bonta, Harvey Rice, and Alexander S. Miller, who shall divide said county into eight districts.

Bourbon

For the county of Barren: Isaac Smith, jr., H. P. Curd, John W. Beauchamp, James G. Hardy, and Wm. E. Munford, who shall divide said county into eight districts.

Barren

For the county of Breckinridge: Richard Casey, Ralph Cox, Davis Crawford, John Drewry, John Cashman, M. Cunningham, Charles Hambleton, D. R. Murray, H. Birch, J. H. Thomas, and David C. Ganaway, who shall divide said county into not less than seven nor more than ten districts.

Breckinridge

For the county of Boone: Ben. Watts, Jacob Shotts, W. E. Hudson, Ben. M. Allen, Richard Parker, Robert Adams, and Moses S. Rice, who shall divide said county into nine districts.

Boone

For the county of Breathitt: John Hargis, Geo. Bowling, Alfred Combs, Harrison Cockrell, and John Holland, who shall divide said county into six districts.

Breathitt

For the county of Ballard: Joseph W. James, Richard D. Gholson, Walter W. Adams, Charles Wickliffe, and M. S. Preston, who shall divide said county into seven districts.

Ballard

For the county of Bath: A. J. Ewing, R. G. Owens, Wm. A. Lane, J. A. Young, M. Gill, and P. Gerrant, who shall divide said county into five districts.

Bath

1850. Butler	For the county of Butler: William Carson, sr., Richard Thornton, John Renier, Gholson Embry, and Wiley Beasley, who shall divide said county into five districts.
Campbell	For the county of Campbell: James M. McArthur, John Orr, Jesse Yelton, George Moran, John C. Tarvin, John H. Nelson, and David Shaw, who shall divide said county into five districts, exclusive of the city of Newport.
Caldwell	For the county of Caldwell: Zebulon Blackburn, Coleman Brown, P. B. McGoodwin, James Nichols, Robert L. Cobb, Hezekiah Oliver, Joseph McConnell, James Kirkpatrick, Francis W. Urey, and Richard Barnes, who shall divide said county into seven districts, so as to make the towns of Princeton, Fredonia, Eddyville, and the Rolling Mill, places of voting in their respective districts.
Christian	For the county of Christian: R. L. Waddill, D. M. Wooldridge, Gilbert Woods, Wm. S. Talbott, Joab Clark, James H. Kelly, John Campbell, (surveyor,) W. W. McKenzie, R. G. Henry, and Wm. Pendleton, who shall divide said county into seven districts.
Clarke	For the county of Clarke: John B. Houston, Samuel A. B. Woodford, Leonard Bell, Robert Scott, Francis McDonald, William B. Keys, Samuel Chorn, James H. G. Bush, and Stephen Eubank, who shall divide said county into seven districts.
Carroll	For the county of Carroll: Richard C. Lindsay, Hezekiah Cox, Hugh Harris, Elijah Demint, and Wm. White, who shall divide said county into five districts.
Casey	For the county of Casey: Geo. Weatherford, Dandridge Tucker, George C. Riffe, McDowell Fogle, Chesley Jones, and Benjamin Jenkins, who shall divide said county into not less than four nor more than six districts.
Clinton	For the county of Clinton: Thomas Bristow, Samuel Long, John M. Davis, Reuben B. Wood, and Wm. Long, who shall divide said county into five districts.
Cumberland	For the county of Cumberland: Jubal Goggin, Jas. H. Gaines, James English, Fountain Alexander, and Milton King, who shall divide said county into five districts.
Carter	For the county of Carter: Geo. W. Ward, Gabriel Scott, George W. Kouns, James Thompson, Charles Rice, Bryant Fanon, and Jack Strother, who shall divide said county into eight districts.
Crittenden	For the county of Crittenden: James Duvall, Daniel A. Flanery, Wm. Hughes, jr., Anthony Birdwell, and Berry S. Young, who shall divide said county into five districts.
Calloway	For the county of Calloway: John Kelso, Alexander Wesson, Charles Curd, Wm. H. Covington, and Jno. Keys, who shall divide said county into not less than five nor more than six districts.
Clay	For the county of Clay: Frederick Nance, Felix J. Gilbert, John Hibbard, sr., James H. Garrard, John Morris,

Daugherty White, and Job Allen, who shall divide said county into six districts. 1850.

For the county of Daviess: Ben. Johnson, John Rodman, Henry Dugan, Wm. Chapman, George W. Triplett, Geo. M. Davidson, Wm. H. Talbutt, and Wm. F. Hawes, who shall divide said county into eight districts, three of which districts shall be on the south side of Panther creek. Daviess

For the county of Edmonson: Samuel Woosley, Martin Jones, Henry Y. Gardner, Woodford Dunn, and Bradford Meredith, who shall divide said county into five districts. Edmonson

For the county of Estill: Josiah A. Jackson, John Kimble, Isaac Mize, Thomas Martin, Anderson Harris, Joseph Asbel, and Wm. Irvin, who shall divide said county into five districts. Estill

For the county of Franklin: James Milam, Alexander Wilson, Thomas Jett, sr., Orlando Brown, and Jno. A. Holton, who shall divide said county into five districts. Franklin

For the county of Fayette: F. K. Hunt, E. Milton, L. P. Young, Joseph Bryan, James Headly, S. E. Broadus, Richard Spurr, Joseph Graves, Thomas J. Scott, John L. Elbert, Nathan Payne, and Thomas Hughes, who shall divide said county, exclusive of the city of Lexington, into six districts. Fayette

For the county of Floyd: John B. Harris, Jas. G. Hatcher, John Power, Edwin Trimble, and Joseph Gearhart, who shall divide said county into eight districts. Floyd

For the county of Fleming: Dixon Clack, Simpson Rigin, Joseph Secrests, Joel De Bell, Ben. Harbeson, James Soursley, and Mason Caywood, who shall divide said county into seven districts. Fleming

For the county of Fulton: A. S. Tyler, Edward Bard, E. G. Kimbro, A. G. McFadden, and John Betts, who shall divide said county into four districts. Fulton

For the county of Gallatin: Benjamin Tiller, Jefferson Peak, John T. Robinson, John O. Hamilton, and M. J. Williams, who shall divide said county into not less than two nor more than four districts. Gallatin

For the county of Graves: S. S. Story, Joel Johns, Wilson Mahan, Jackson Baker, and Wm. Beadles, who shall divide said county into eight districts. Graves

For the county of Greenup: E. J. Hockaday, G. W. Darlington, H. B. Pollard, and Jesse Corum, who shall divide said county into seven districts. Greenup

For the county of Grant: Charles Ruddle, Henry Woodyard, Jeremiah Morgan, Samuel C. Edgar, and Alfred Kendall, who shall divide said county into not less than five nor more than seven districts. Grant

For the county of Grayson: R. Goode, T. Brunk, sr., Henry Haynes, Joseph Bratcher, and L. D. Butler, who shall divide said county into five districts. Grayson

For the county of Garrard: John Beasley, Robt. C. Noel, E. D. Kennedy, Jennings Price, Daniel Ray, Jesse Yantis, Garrard

- 1850.** and A. O'Bannon, who shall divide said county into four districts.
- Green** For the county of Green: Thomas W. Lisle, Thomas R. Barnett, Samuel A. Spencer, John Y. Owens, and James C. Edwards, who shall divide said county into five districts.
- Hopkins** For the county of Hopkins: Andrew Sisk, Orlean Bishop, Thomas J. Couch, Nathaniel M. Brooks, and Daniel O. Cargile, who shall divide said county into not less than six nor more than seven districts.
- Henderson** For the county of Henderson: James M. Stone, George Sugg, Hector Green, Henry Dixon, jr., Ferna Cannon, Thomas Towles, jr., James Thomas, Wm. Rankin and Cornelius Burnett, who shall divide said county into seven districts.
- Hardin** For the county of Hardin: Alfred M. Brown, Warren Mitchell, Peter Stewart, Nathan Neighbors, Ambrose D. Geoghegan, Thomas D. Brown, and Hercules Hays, who shall divide said county into eight districts.
- Hancock** For the county of Hancock: George Smith, Wilford Wheatley, Lewis Lane, Thomas N. Gibbs, and Daviess L. Adair, who shall divide said county into five districts.
- Henry** For the county of Henry: C. M. Mathews, J. P. Smith, Isaac P. McConnell, Washington Perry, and Wm. Ditto, who shall divide said county into eight districts.
- Harlan** For the county of Harlan: Hiram Lewis, James B. Howard, Noble Smith, Jefferson Perciful, John Jones, Hezekiah Branson, sr., and David Turner, who shall divide said county into as many districts as they may think proper.
- Hart** For the county of Hart: David W. Maxey, John B. Cobb, Ben. Copelin, Jeremiah D. Harbor, and Robert S. Munford, who shall divide said county into five districts.
- Harrison** For the county of Harrison: Hugh Newell, Nicholas D. Moore, David Lemmon, Hamilton Casey, and William B. Glave, who shall divide said county into eight districts.
- Hickman** For the county of Hickman: Stephen Ray, S. F. Rennick, Thomas Griffey, W. R. Wilson, Elisha Beasley, and J. M. Robinson, who shall divide said county into four districts.
- Jessamine** For the county of Jessamine: John Bronaugh, Jacob Sallee, James Robertson, David Crozier, Hervey C. Huggins, and Jordan Scott, who shall divide said county into five districts.
- Jefferson** For the county of Jefferson: Edward D. Hobbs, John Stivers, John Pound, James Graham, Thomas D. Davis, Joshua F. Speed, Samuel Hart, David Meriwether, John Doup, and James F. Conn, who shall divide said county, except the city of Louisville, into nine districts.
- Johnson** For the county of Johnson: Daniel Hagar, John Auxier, Jerman W. Huff, Martin Franklin, and James Mullett, who shall divide said county into six districts.
- For the county of Kenton: John A. Goodson, James A.

LAWS OF KENTUCKY.

2

Anderson, Alexander F. Fleming, James Ellis, and William G. Ellis, who shall divide said county into not less than four nor more than five districts, exclusive of the city of Covington.

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Kenton

For the county of Knox: I. Mill Jones, George M. Adams, James H. Pogue, Jefferson Craig, Dempsey King, James Barton, and Jas. Woods, who shall divide said county into not less than six nor more than nine districts.

Knox

For the county of Larue: John Duncan, Joseph Nevet, Gabriel Kirkpatrick, H. H. Tinker, and William K. Hubbard, who shall divide said county into five districts:

Larue

For the county of Letcher: Nathaniel Collins, Preston H. Collier, Ezekiel Brashears, Samuel Francis, Wesley Breeding, Henry Polly, and Joseph Cornett, who shall divide said county into five districts.

Letcher

For the county of Laurel: Levi Jackson, Ephraim Jones, Jarvis Jackson, David Williams, Henry Forbes, J. M. Farris, Samuel McHargue, sr., James McNeel, sr., and John Pitman, who shall divide said county into six districts.

Laurel

For the county of Lincoln: Robert Blain, jr., Haydon J. McRoberts, A. K. Root, J. W. Tisdale, Jas. Miller, and H. S. Withers, who shall divide said county into six districts.

Lincoln

For the county of Lewis: Isaac Middleton, J. R. Duke, U. R. McKellup, George M. Thomas, Joseph Sparks, Judge Baldwin, and N. R. Garland, who shall divide said county into eight districts.

Lewis

For the county of Lawrence: Walter Osborne, W. Walters, James Pritchard, Archibald Borders, John W. Hawes, S. Roberts, and Oliver W. Martin, who shall divide said county into eight districts.

Lawrence

For the county of Logan: Jas. M. Bell, C. A. Wilson, Col. K. C. Mason, Samuel H. Gordon, Martin Rush, Dilard Duncan, (Miss.) William Hayden, Ben. Fugate, and Dr. Conn, who shall divide said county into eight districts.

Logan

For the county of Livingston: William Gordon, Isaac Shelby, Bird Jameson, Willis Piles, E. P. Ross, James H. Bigham, and Jas. T. Persons, who shall divide said county into five districts.

Livingston

For the county of Muhlenburg: Saunders Eaves, Peter Shaver, R. H. Jones, Baylos E. Oats, Mosely P. Wells, and James Taggart, who shall divide said county into five districts.

Muhlenburg

For the county of Madison: Wm. Moore, Beverly S. Terrill, Peter T. Gentry, Thos. S. Bronston, Jas. Black, Silas Newlan, John Moran, Jacob S. White, George Dejar-natt, Milo Baxter, and Christopher Harris, who shall divide said county into nine districts.

Madison

For the county of Montgomery: Geo. W. Thomas, Jas. McKee, Nelson Prewitt, John D. Orear, and Jesse Yates, who shall divide said county into six districts.

Montgomery

For the county of Mercer: James Taylor, A. G. Kyle,

Mercer

1850.

R. M. Davis, Jas. Turner, J. J. McAfee, E. D. Veach, John Williams, and Jackson J. Driskill, who shall divide said county into eight districts.

Marion

For the county of Marion: James Schooling, Washington Bell, Thos. P. Knott, John Shuck, James H. Tucker, sr., and Uriah Gartin, who shall divide said county into six districts.

Marshall

For the county of Marshall: Marcus Barnett, James Goheen, Coleman Nicholds, Moses Riley, and John Bryan, who shall divide said county into six districts.

McCracken

For the county of McCracken: J. B. Husbands, Elijah Thompson, Edwin Adams, H. C. Pitt, and John Milliken, who shall divide said county into six districts.

Meade

For the county of Meade: Henry Haynes, sr., John C. Lawson, Thomas J. Gough, R. G. Clarkson, and Thompson Kendall, who shall divide said county into six districts.

Monroe

For the county of Monroe: Hiram Hagan, John H. McPherson, John S. Barlow, Wm. D. Martin, Ben. F. Bedford, Christopher Hays, and Radford Maxey, who shall divide said county into six districts.

Morgan

For the county of Morgan: D. N. Cottle, Daniel Horton, Jas. Maddox, Miles Kash, and Benjamin F. Gardner, who shall divide said county into eight districts.

Mason

For the county of Mason: S. W. Wood, Isaac S. Reed, W. G. Bullock, Abraham Bledsoe, and Jasper S. Morris, who shall divide said county into ten districts.

Nicholas

For the county of Nicholas: John F. McMillan, Ben. F. Edwards, Jno. M. Raymond, Thompson S. Parks, David Ballingal, and Willis C. Rogers, who shall divide said county into six districts.

Nelson

For the county of Nelson: P. B. Muir, John H. Talbot, Wm. Johnson, John Samuels, Abner King, Thomas H. Miles, Elisha E. Murphy, and Charles Rapier, who shall divide said county into eight districts.

Owen

For the county of Owen: George Marshall, H. Abbott, Thomas Taylor, James Ballard, Thomas A. Berryman, F. V. Thomas, John Roland, Joel Herndon, H. Blanton, John Q. Baker, and R. L. Edwards, who shall divide said county into as many districts as they may think advisable.

Oldham

For the county of Oldham: James F. Wilson, Samuel B. Steele, James Mount, Reuben Pemberton, and James Oldham, who shall divide said county into not less than four nor more than five districts.

Ohio

For the county of Ohio: H. D. Taylor, H. Haynes, John A. Taylor, John Rowan, Nathaniel Wise, James Miller, and James Fitzhugh, who shall divide said county into as many districts as they shall think proper.

Owsley

For the county of Owsley: John Brandenburg, W. McGuire, John Smith, James E. Gibson, M. C. Hughes, Wm. Morris, John A. Stamper, and Abel Pennington, who shall divide said county into five districts.

For the county of Perry: Jackson G. Combs, Hiram Begley, James Stewart, Justice Bowling, John Campbell, sr., Joseph Eversole, and Alexander Combs, who shall divide said county into six districts. 1850.
Perry

For the county of Pulaski: John M. Weddle, W. D. Black, Joel W. Sallee, G. W. Sloan, William Taylor, and Levi Hubble, jr, who shall divide said county into eight districts. Pulaski

For the county of Pike: William Cecil, Geo. N. Brown, James Damrel, Jas. Duskins, and Lewis Sowers, who shall divide said county into seven districts. Pike

For the county of Pendleton: R. L. Coleman, Wm. Angel, S. F. Swope, Harvey Smith, Aaron Thrasher, A. Petit, and James Boner, who shall divide said county into seven districts. Pendleton

For the county of Rockcastle: W. H. Kirtley, William Smith, John Haley, Jas. Dysert, David Butcher, Andrew McClary, Hobb McClure, sr., Joseph Houk, and Uriah Gresham, who shall divide said county into six districts. Rockcastle

For the county of Russell: William Bernard, William Pinter, Nathan McClure, Jonathan Williams, and Moses Hickenbottom, who shall divide said county into five districts. Russell

For the county of Simpson: Jesse A. Briggs, Brice Wilkerson, Charles Neeley, Samuel Hatfield, and Thomas S. Mahan, who shall divide said county into five districts. Simpson

For the county of Shelby: Henry Bohannon, Nathan Salmons, Thomas Smith, jr., John A. Hornsby, and William D. Bowland, who shall divide said county into seven districts. Shelby

For the county of Scott: James G. Leach, Thomas K. Holland, Beri C. Glass, Wm. C. Graves, Polcer Hiles, Jefferson T. Craig, and Ed. H. Black, who shall divide said county into not less than seven nor more than nine districts. Scott

For the county of Spencer: William P. Clark, John Wooten, Elijah Richardson, Thomas Newman, and Jonathan Davis, who shall divide said county into not less than three nor more than five districts. Spencer

For the county of Todd: Nathaniel Burrus, James Russell, S. M. Lowry, Thos. Pepper, Wm. Henry, Henry C. Ewing, and Robert E. Glenn, who shall divide said county into six districts. Todd

For the county of Taylor: Randolph Robinson, James Newcomb, James Caldwell, John Atkinson, and Jno. Cloyd, who shall divide said county into five districts. Taylor

For the county of Trigg: E. Grace, R. P. Dawson, W. P. Carloss, R. K. Tyler, and Stephen W. Gray, who shall divide said county into six districts. Trigg

For the county of Trimble: John Wright, J. Strother, Levi H. Elliott, W. Sames, and S. Gatewood, who shall divide said county into four districts. Trimble

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Union

For the county of Union: James T. Pierson, Charles Buckman, H. B. Eaty, Elijah L. Givens, and George Munroe, who shall divide said county into seven districts.

Woodford

For the county of Woodford: Allen Hawkins, James McConnell, John Berryman, John Barkley, William Buford, Charles Cotton, and John Onan, who shall divide said county into not less than four nor more than six districts.

Wayne

For the county of Wayne: John S. Wray, Miles Gregory, Hiram T. Hall, William A. Cooper, Benjamin F. Coffey, and James V. Warden, who shall divide said county into five districts.

Warren

For the county of Warren: Peter Penner, James F. Ewing, S. J. Patillo, Robert Justice, E. C. Smith, James K. Hines, Joseph D. Duncan, Elijah Claypool, and L. L. Cook, who shall divide said county into seven districts.

Whitley

For the county of Whitley: Wm. C. Gilliss, Wm. Hays, Thos. R. Harman, A. N. Hubbard, John Sears, Luke Moore, Milton White, I. A. Parton, and Daniel Faulkner, who shall divide said county into eight districts.

Washington

For the county of Washington: Mordecai Hardin, John M. Smith, Alexander Hamilton, Jesse Fox, Daniel McIlvoy, and Leonard Seay, who shall divide said county into six districts.

Louisville.

§ 3. That the city of Louisville, out of the wards thereof as they are now constituted and bounded, shall be divided into four districts; and that the first and second wards shall constitute the first district, the third and fourth wards the second, the fifth and sixth the third, and the seventh and eighth the fourth; and that each of said districts shall be entitled to two justices of the peace and one constable, who shall reside therein, to be chosen by the qualified voters residing in each district, at the next election therefor; and it shall be the duty of the present mayor and council of said city, and they are hereby authorized and required to designate a suitable place in each district for the purpose of holding elections for the justices and constables aforesaid, according to the provisions of this act.

Lexington and
Newport & Cov-
ington.

§ 4. That it shall be the duty of the mayors and councilmen of the cities of Lexington, Newport, and Covington, to lay off their respective cities into two districts, each; and that each district shall be entitled to two justices of the peace and one constable, who shall reside therein, to be elected by the qualified voters therein; and it shall be the further duty of said mayors and councilmen to designate the place of voting in each district, for said officers, to be laid off as aforesaid.

Place to be
designated for
holding election

§ 5. The commissioners aforesaid shall, at the time of laying off said districts, designate a suitable place in each district for the purpose of holding elections for the officers aforesaid—due regard being had to the convenience and population of said districts.

§ 6. The commissioners, in laying off said districts, shall bound the same by county lines, rivers, creeks, branches, mountains, ridges, roads, (public and private,) section or range lines, or such other marks, natural or artificial, as to said commissioners shall seem necessary and proper to make said boundaries notorious: *Provided*, that said commissioners shall not be authorized to employ surveyors in designating said boundaries.

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How districts to be bounded.

§ 7. It shall be the duty of said commissioners in each county to number each district, and make out a complete record of the boundaries of each when laid off, under their hands; also, a copy of the same, one of which shall be filed and recorded in the office of the county court clerk in which it is situated, and the other shall be forthwith transmitted to the office of the secretary of state, directed to that officer, and it shall be his duty carefully to preserve the same in his office.

District to be numbered and boundary to be recorded.

§ 8. Said commissioners, before they enter upon the duties hereby prescribed, shall take an oath before some justice of the peace faithfully and impartially to perform the services required by this act.

Com'rs to take oath.

§ 9. It shall be the duty of said commissioners to proceed forthwith, so soon as they receive notice of their appointment, to perform the duties herein assigned them, and lay off the districts provided for in this act, and as soon as the commissioners shall have divided and laid off their respective counties and reported the same as provided for in this act, it shall be the duty of the clerks of the several county courts to make out a fair copy, clearly setting forth the boundaries of each district in their respective counties, signed and certified as such, and deliver said certificates to the officer of the district, respectively, who may be authorized to hold elections for justices of the peace and constables, as provided for in this act, who shall deliver said certificates to the judges of the elections in their respective districts, and it shall be the duty of said judges to have said certificates filed in the office of one of the justices of the peace in their respective districts. The sheriff shall cause a copy of the bounds of the district and place of voting, to be posted up at the places of voting, at least twenty days before each election.

Duty of Commissioners, C'ty Court Clerks, &c.

§ 10. Said commissioners are hereby required to make out their report and forward a copy thereof to the secretary of state, as provided in the seventh section, on or before the first Monday in February next.

Com'rs to forward copy to Sec. of State.

§ 11. There shall be elected, by the qualified voters of each district, as laid off by said commissioners, two justices of the peace and one constable, in accordance with the thirty-fourth section of the fourth article, and the fifth section of the sixth article of the constitution.

Two Justices and one Constable to be elected in each district.

§ 12. That it shall be the duty of the secretary of state to forward to the sheriff of each county one printed copy of

Duty of Secretary of State

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this act for each commissioner in his county ; and it shall be the duty of the sheriff to hand the same to the commissioners, forthwith ; and it shall be the duty of the public printer forthwith to print a sufficient number of copies of this act to enable the proper authorities to comply with the provisions of the same.

Clerks compensation.

§ 13. That the several clerks of this commonwealth shall receive such compensation for the services to be performed by them under this act, as their respective county courts shall allow, to be paid out of the county levy.

Approved December 12, 1850.

CHAPTER 53.

AN ACT to run and re-mark the dividing line between the counties of Butler and Edmonson.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the county surveyor of Edmonson county, together with Samuel Woosley, of Edmonson county, and Edward Renfro, of Butler county, be and they are hereby authorized to run and re-mark the dividing line between the counties of Butler and Edmonson ; and the expense of said survey shall be paid by said counties jointly.

Approved December 7, 1850.

CHAPTER 57.

AN ACT to change the lines of Perry and Clay counties.

Boundary line changed.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the line between the counties of Clay and Perry be changed as follows : beginning one quarter of a mile below the mouth of Upper Bad creek, on the middle fork of Kentucky river ; thence to the top of the ridge on the lower side of said creek ; thence, with the dividing ridge between Bad creek and the head-waters of Cut-shin, to the bonnet rock and the Harlan and Perry line ; thence, with the Harlan and Perry line, to the waters of the middle fork of Kentucky river, and the intersection of the Clay, Harlan, and Perry lines, including the residence of John D. Coldiron and Ezekiel Hoskins, and all that part of Perry lying above Upper Bad creek and its waters on the middle fork, in the county of Clay.

Approved December 9, 1850.

CHAPTER 72.

1850.

AN ACT to amend the revenue laws, by increasing the tax on nine and ten pin alleys.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That, from and after the passage of this act, the tax upon nine and ten pin alleys shall be fifteen dollars upon each and every alley that is now, or may hereafter be, erected; and each track on which a game is played to be deemed an alley.

Approved December 16, 1850.

CHAPTER 75.

AN ACT to increase the terms of the Campbell County Court.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That, hereafter, a term of the county court of Campbell county shall be holden on the fourth Monday in each and every month in the year, any law to the contrary notwithstanding.

Approved December 16, 1850.

CHAPTER 105.

AN ACT to regulate the division of Hancock county into Magistrates' and Constables' districts.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the commissioners heretofore appointed by an act of the present general assembly, entitled, "an act appointing commissioners to divide the counties of this state into districts, for the election of justices of the peace and constables," to district the county of Hancock, be and they are hereby directed to divide said county into not less than three nor more than five districts.

Approved December 21, 1850.

CHAPTER 109.

AN ACT making provision for running and marking the lines of Cumberland and Adair counties.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That it shall be duty of John M. Baker, surveyor of Cumberland county, and John D. Mourning, deputy surveyor of Adair county, to run and mark the line between the counties of Adair and Cumberland, beginning at a point where the counties of Barren, Cumberland, and Adair join, and running to the intersection of the Russell county line.

§ 2. That said surveyor and deputy surveyor, in running and marking said line, shall be governed by the several

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acts of the general assembly establishing the boundaries of said counties, and shall run and mark said lines in strict accordance therewith.

§ 3. That said surveyor and deputy surveyor shall employ two competent chain carriers and a marker; and, before entering upon the duties prescribed in this act, said surveyors, chain carriers, and marker shall, before some justice of the peace of one of said counties, take an oath to run and mark said line faithfully, fairly, impartially, and according to the provisions of this act. They shall commence running said line on the first day of April next, if possible; and if not on that day, then on some day to be appointed and agreed on by them; and when said line is run and marked, according to the provisions of this act, it shall be the dividing line between the counties of Adair and Cumberland.

§ 4. Said surveyor and deputy surveyor shall make out two fair plats of their survey, with proper references, and a report to accompany the same, one of which shall be deposited in the clerk's office of the Cumberland county court, and the other in the clerk's office of the Adair county court.

§ 5. That said surveyor and deputy surveyor shall have an allowance made by their respective county courts for their services; and the chain carriers and marker shall be entitled each to one dollar per day for the time they are employed in the work—one half to be levied by the Cumberland county court, and the other half by the Adair county court.

Approved December 21, 1850.

CHAPTER 111.

AN ACT to require the Attorney General to perform certain duties in regard to the Owingsville and Big Sandy Turnpike Road Company.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the attorney general shall institute, in the general court of this commonwealth, in the year 1851, a proceeding to enquire into the fact, whether the Owingsville and Big Sandy turnpike road company have, by failing to keep said road in proper repair, or from any other cause, forfeited the rights and privileges given to it by the original charter, or by any or all the acts of the general assembly amendatory of said charter; and for any violation of said charter, to cause the franchises of said company to be forfeited and seized to the use of the commonwealth.

Approved December 21, 1850.

LAWS OF KENTUCKY.

17

CHAPTER 118.

1850.

AN ACT to appoint Oscar Pepper in the place of Charles Cotton, to lay off Woodford county into Magistrates' and Constables' districts, and for other purposes.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That Oscar Pepper be, and he is hereby appointed a commissioner, in the place of Charles Cotton, to lay off the county of Woodford into magistrates' and constables' districts.

Com'r appointed in the county of Woodford.

§ 2. That Squire Gatliff be, and he is hereby appointed a commissioner, in the place of Thos. R. Harman, to lay off Whitley county into magistrates' and constables' districts.

In Whitley county.

Approved December 21, 1850.

CHAPTER 124.

AN ACT to appoint M. T. Hall one of the Commissioners to lay off Warren county into Magistrates' and Constables' districts.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That M. T. Hall be appointed a commissioner to lay off the county of Warren into magistrates' and constables' districts, in the place of L. L. Cooke, who refuses to act.

Approved December 18, 1850.

CHAPTER 130.

AN ACT allowing an additional district in Jefferson county for the election of Justices of the Peace and Constables, and for other purposes.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That the act, entitled, "an act appointing commissioners to divide the counties of this state into districts, for the election of justices of the peace and constables, approved December 12, 1850," be and the same is hereby so amended as that there shall be ten districts in the county of Jefferson, instead of nine; and the commissioners designated by the act, to which this is an amendment, shall lay off the same into ten districts, in accordance to the provisions of the aforesaid act.

Com'r in Jefferson to lay off ten districts.

§ 2. That the commissioners appointed to lay off Trimble county into districts for the election of justices of the peace and constables, be and they are hereby directed to lay off said county into five instead of four districts, and that Palmyra shall be a place of voting in one of said districts.

Trimble county to be laid off into 5 districts.

§ 3. That the commissioners appointed to lay off Clay county into districts for the election of justices of the peace and constables, be and they are hereby directed to lay off said county into eight districts, if they think it expedient so

Clay county may be laid off into eight districts.

1850.

to do, and that T. J. McWhorter be and he is hereby appointed an additional commissioner.

Approved January 16, 1851.

CHAPTER 132.

AN ACT allowing an additional district in Wayne and Pulaski counties, for the election of Magistrates and Constables, and for other purposes.

Wayne county
to be laid off in-
to six districts.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That the commissioners heretofore appointed to divide Wayne county into districts, for the election of magistrates and constables, be required to divide said county into six districts instead of five.

Pulaski county
to be laid off in-
to nine districts

§ 2. That the commissioners heretofore appointed to divide Pulaski county into districts, for the election of magistrates and constables, be required to divide said county into nine districts instead of eight.

Commissioners
in Caldwell co.

§ 3. That Sandford Duncan, jr., and William Carter be appointed commissioners to divide Caldwell county into districts, for the election of magistrates and constables, in place of Francis W. Urey and Coleman Brown, heretofore appointed

Christian coun-
ty.

§ 4. That James Alder be appointed an additional commissioner to lay off the county of Christian into magistrates' and constables' districts.

Breckinridge
county.

§ 5. That James Drury be appointed a commissioner to divide Breckinridge county into districts, for the election of magistrates and constables, in place of John Drury, heretofore appointed.

Approved January 16, 1851.

CHAPTER 133.

AN ACT to reduce the number of districts in Mercer county, for the election of Justices of the Peace and Constables.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the number of districts, for the election of justices of the peace and constables in the county of Mercer, be and the same is hereby reduced to six instead of eight, as now provided by law.

Approved January 21, 1851.

CHAPTER 139.

AN ACT to amend an act, approved November 18, 1850, to settle the dividing line of Estill and Owsley counties.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That, instead of the three commissioners appointed by an act of the general assembly, approved No-

1850.

venember 18, 1850, to adjust and settle the boundary line between the counties of Estill and Owsley, Curtis F. Burnam, of the county of Madison, be and he is hereby appointed sole commissioner, to be governed by all the provisions of said act, and the act to which it was an amendment.

Approved January 21, 1851.

CHAPTER 140.

AN ACT to establish an additional Justices' and Constable's District in Fulton county.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That an additional district, for the election of justices of the peace and constables be laid off, by the commissioners heretofore appointed, in the county of Fulton, to be bounded by what is denominated the Madrid bend.

Approved January 21, 1851.

CHAPTER 147.

AN ACT to amend an act, entitled, an act for the benefit of the soldiers of the late war with England, &c.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the provisions of an act, entitled, an act for the benefit of the soldiers of the late war with England, &c., approved November 23, 1850, be and they are hereby extended to the widows, heirs, and devisees of the persons in said recited act mentioned: *Provided,* that upon the presentation to the clerk for authentication of any papers to be used in the prosecution of the claims mentioned in said recited act, he may require the claimant or agent employed in its prosecution, to swear that such papers are to be so used; and the clerk is hereby authorized to administer the oath to such persons for that purpose.

Approved January 21, 1851.

CHAPTER 164.

AN ACT in relation to Magistrates' and Constables' Districts in Henry and Laurel counties.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky,* That the act, entitled, "an act appointing commissioners to divide the counties of this state into districts, for the election of justices of the peace and constables," approved December 12, 1850, be and the same is hereby so amended, as that John James, James Hisle, and Elijah Thrailkill be added to the list of commissioners for the county of Henry; which commissioners, together with

Additional
com'rs for Hen-
ry county.

1850.

those named in said act, or a majority of them, shall lay off said county into not less than seven, nor more than eight districts.

Their powers
and duties.

§ 2. That a majority of all the commissioners for said county may reconsider and annul any former action, in laying off said county; and that said commissioners have until the first Monday in March next to make final returns of the districts in said county, instead of the first Monday in February, as provided in the 10th section of said act.

Duty of Secre-
tary of State

§ 3. That the secretary of state shall forward a copy of this act to the sheriff of Henry county, who shall summons all said commissioners together, within ten days after the receipt thereof, at the county seat, and lay the same before them.

Laurel county
to be laid off in-
to 7 districts.

§ 4. That the commissioners appointed to lay off the county of Laurel into magistrates' and constables' districts, shall lay off said county into seven instead of six districts, as now prescribed by law.

Approved January 25, 1851.

CHAPTER 168.

AN ACT to regulate the sale of the estate of persons of unsound mind.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That it shall be lawful for the circuit courts, in rendering decrees for the sale of the estate of any person of unsound mind, to order the sale of real estate before the sale of slaves, if it shall appear to the court that it would be most conducive to the welfare of such person so to decree.

Approved January 25, 1851.

CHAPTER 185.

AN ACT to extend the provisions of an act, entitled, an act regulating the price of taking up boats on the Ohio river, approved January 29, 1829, to Big Sandy.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That all the provisions of an act, entitled, an act to regulate the price of taking up boats on the Ohio river, approved January 29, 1829, be and they are hereby extended to Big Sandy river; and this shall apply also to rafts, saw logs, and lumber of every description; and the person or persons taking up the same, if he or they shall secure such rafts, logs, or lumber, shall be entitled to and receive fifteen cents for each log so taken up and secured, to be paid by the owner or owners before said owner or owners shall take the same into possession.

Approved January 25, 1851.

CHAPTER 196.

1850.

AN ACT to authorize the running and re-marking the boundary lines of Butler county.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That William Carson, of the county of Butler, be and he is hereby appointed commissioner to run and re-mark the several lines of boundary around the said county of Butler, in conjunction and with the aid of C. M. Briggs, of Warren county, in so far as such boundary may border on said county of Warren; of C. A. Wilson, of Logan county, in so far as such boundary shall border on the said county of Logan; of James Taggart, of Muhlenburg county, in so far as such boundary shall border on the said county of Muhlenburg; and of Robert Goode, of Grayson county, in so far as such boundary shall border on the said county of Grayson; and that said commissioner for the county of Butler may, and he is hereby directed to summons the aid of the respective assistant commissioners before mentioned, and proceed within the next succeeding twelve months after the passage of this act, to run and re-mark the several boundary lines of the county of Butler, as nearly upon the old, formerly run, and legally established lines of boundary as may be possibly ascertained.

§ 2. That the county courts of the counties of Butler, Warren, Logan, Muhlenburg, and Grayson, be and they are hereby authorized and empowered, severally, to allow their respective commissioners designated in this act, such compensation for their services, in running and re-marking said county lines, as they may deem reasonable and proper.

Approved February 1, 1851.

CHAPTER 203.

AN ACT to divide the State into four districts for the election of Judges of the Court of Appeals.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the first judicial district for the court of appeals shall be composed of the counties of Mason, Nicholas, Bourbon, Clarke, Madison, Rockcastle, Lewis, Fleming, Bath, Montgomery, Estill, Laurel, Whitley, Harlan, Knox, Clay, Owsley, Letcher, Perry, Breathitt, Morgan, Lawrence, Carter, Greenup, Johnson, Floyd, Pike, and Pulaski.

First district.

That the second district shall be composed of the counties of Bracken, Pendleton, Campbell, Kenton, Boone, Gallatin, Carroll, Trimble, Henry, Owen, Grant, Harrison, Scott, Fayette, Jessamine, Garrard, Boyle, Mercer, Anderson, Franklin, Woodford, Shelby, and Oldham.

Second district.

That the third district shall be composed of the counties of Jefferson, Bullitt, Nelson, Spencer, Hardin, Meade, La-

Third district.

1850. rue, Hart, Barren, Monroe, Cumberland, Clinton, Wayne, Russell, Casey, Lincoln, Washington, Marion, Taylor, Green, and Adair.

Fourth district.

That the fourth district shall be composed of the counties of Fulton, Hickman, Ballard, McCracken, Graves, Callo-way, Marshall, Livingston, Crittenden, Union, Hopkins, Caldwell, Trigg, Todd, Logan, Simpson, Warren, Allen, Christian, Henderson, Muhlenburg, Daviess, Ohio, Butler, Edmonson, Hancock, Grayson, and Breckinridge.

Approved February 1, 1851.

CHAPTER 215.

AN ACT in relation to the Magistrates' and Constables' districts in Grant county.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That it shall be lawful for the commissioners appointed to divide the county of Grant into magistrates' and constables' districts, to withdraw their report, and alter or change the same as they may deem best for the convenience of the citizens of said county; and should they alter or change any of the districts first reported by them, it shall be as binding in law as though no such change had been made: *Provided,* that said commissioners shall report as now prescribed by law, and may have until the tenth day of February, 1851, to return their report.

Approved February 3, 1851.

CHAPTER 223.

AN ACT in relation to Magistrates' and Constables' districts in Christian county.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That it shall be lawful for the commissioners appointed to divide the county of Christian into magistrates' and constables' districts, to withdraw their report, and alter or change the same as they may deem best for the convenience of the citizens of said county; and should they alter or change any of the districts first reported by them, it shall be as binding in law as though no such change had been made: *Provided,* that it shall be lawful for said commissioners to divide the said county into eight districts, and shall report as now prescribed by law, and have until the 25th day of February, 1851, to return their report.

Approved February 8, 1851.

CHAPTER 224.

1850.

AN ACT to amend the charter of the Farmers Bank of Kentucky.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That it shall be lawful for the president and directors of the Farmers Bank of Kentucky to establish an additional branch of said bank in the city of Louisville, with a capital of five hundred thousand dollars, and the capital stock of said bank is to that extent extended; and A. H. Wallace, L. L. Shreve, B. J. Adams, H. D. Newcomb, W. A. Richardson, A. L. Shotwell, and Thomas H. Hunt are appointed commissioners to open books, at such time and places as the directors of the parent bank may direct, for the subscription of stock; and shall have the same powers and rights of commissioners appointed at other places, where branches have been established.

Approved February 8, 1851.

CHAPTER 225.

AN ACT to establish twelve Judicial Circuit districts.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the judicial districts for circuit courts in this commonwealth shall be composed of the counties as follows, to-wit:

First district: Fulton, Hickman, McCracken, Graves, Calloway, Marshall, Livingston, Crittenden, and Ballard. 1st district.

Second district: Caldwell, Trigg, Christian, Todd, Hopkins, Union, and Henderson. 2d district.

Third district: Daviess, Hancock, Ohio, Grayson, Breckinridge, Meade, Hardin, Muhlenburg, and Larue. 3d district.

Fourth district: Butler, Logan, Simpson, Allen, Monroe, Barren, Hart, Edmonson, and Warren. 4th district.

Fifth district: Cumberland, Clinton, Wayne, Pulaski, Casey, Lincoln, Taylor, Green, Adair, and Russell. 5th district.

Sixth district: Bullitt, Jefferson, Spencer, and Shelby. 6th district.

Seventh district: Nelson, Washington, Marion, Mercer, Boyle, Garrard, and Anderson. 7th district.

Eighth district: Oldham, Henry, Trimble, Carroll, Owen, Gallatin, Boone, Grant, and Kenton. 8th district.

Ninth district: Campbell, Pendleton, Mason, Bracken, Nicholas, Harrison, Bourbon, and Scott. 9th district.

Tenth district: Bath, Fleming, Lewis, Greenup, Carter, Lawrence, Montgomery, and Morgan. 10th district.

Eleventh district: Franklin, Woodford, Jessamine, Fayette, Madison, Estill, and Clarke. 11th district.

Twelfth district: Rockcastle, Knox, Harlan, Laurel, Whitley, Clay, Perry, Owsley, Letcher, Breathitt, Floyd, Pike, and Johnson. 12th district.

Approved February 8, 1851.

1850.

CHAPTER 227.

AN ACT to create two additional Magistrates' and Constables' districts in Oldham county.

Two additional districts established.

Boundary of 1st district.

Boundary of 2d district.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That in addition to the magistrates' and constables' districts, as laid off by the commissioners for the county of Oldham, two districts be likewise made, and the same are hereby laid off, as follows, to-wit: beginning at the mouth of Bell's branch, and running in a straight line to Mrs. Catharine Varble's, on eighteen mile creek, at the mouth of Kelly's branch; thence up said branch to Sadler's mills; thence with the Sligo road to the Trimble county line; thence with said line to the mouth of Patten's creek, and from the mouth of the same to the beginning, to be known as the Covington district. The second district is hereby laid off as follows, to-wit: beginning at Samuel Washburn's on the Henry and Oldham line; thence to Wm. Smizer's, on Curry's fork, including him; thence in a line to Hampton Sparks' including Thomas Potts, A. K. Maddox, and said Sparks; thence to Mrs. Neale's, including David Lockhart; thence to Floyd's fork, including A. Matthis, M. Demoss, and Lewis Sweeney; thence up Floyd's fork to the Henry line, and with that line to the beginning, to be known as the Ballardsville district.

Voting places changed.

§ 2. That the voting place of the Covington district shall be at the Covington meeting house; and the voting place of the Ballardsville district shall be at the tavern house occupied by John O. Walten, in the town of Ballardsville.

Approved February 8, 1851.

CHAPTER 233.

AN ACT to authorize the County Courts to change the names of persons.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That persons desirous of changing their names may, on application to any county court, have such changes made as desired by the applicant: *Provided*, that said applicant, at the time of said change, be of the age of twenty one years.

§ 2. That persons may, on behalf of their wards, or infant children, by a like application, cause the names of such ward or infant children to be changed as desired by such applicant.

§ 3. That the orders of court making such changes of names shall be recorded by the clerks of said courts, in a book to be kept for that purpose, with proper alphabetical references; and for their services under this act, they shall be entitled to the same fees as for like services in other cases.

Approved February 10, 1851.

CHAPTER 236.

1851.

AN ACT to amend an act giving to officers, crews, mechanics, and others, a lien on steamboats, approved January 28, 1839.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the provisions of an act, entitled, an act giving to officers, crews, mechanics, and others, a lien on steamboats, approved January 28, 1839, shall be and they are hereby extended to every debt contracted or made with, in this state, on account of work, supplies, or materials furnished by mechanics, tradesmen, and others, for or on account of, or towards the building, repairing, fitting, or furnishing any wharf-boat, flat-boat, or other water craft.

Approved February 10, 1851.

CHAPTER 245.

AN ACT in relation to Magistrates' and Constables' Districts in Logan county.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That it shall be lawful for the commissioners appointed to divide the county of Logan into magistrates' and constables' districts, to withdraw their report, and alter and change the same as they may deem best for the convenience of the citizens of said county; and should they alter or change any of the districts, first reported by them, it shall be as binding in law as though no such change had been made: *Provided,* that said commissioners shall have until the 25th of February to return the report to the secretary of state—which report shall be made according to law.

Approved February 10, 1851.

CHAPTER 251.

AN ACT to prevent the close shaving of the heads of convicts in the Penitentiary.

Whereas, by the 28th section of an act, entitled, "an act to amend the penal laws of this commonwealth," approved February 10, 1798, all the male convicts confined in the penitentiary of this state, are required to "have their heads and beards close shaven at least once every week:" and whereas, a portion of the requisition of said section of said act is deemed entirely unnecessary, is promotive of no good object, but is calculated to endanger the health of the convicts, and superinduces an exhibition of barbarity inconsistent with the spirit of the present age. Therefore,

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the 28th section of the above recited act, so far as the same requires the "heads" of the convicts to be "closely shaven at least once every week," be and the

1851.

same is hereby repealed ; and from and after the passage of this act it shall not be lawful for the keeper, or any officer of the penitentiary, either by himself or by his direction, to have "closely shaven," at any time whatever, the head of any convict in said penitentiary, unless said process of closely shaving the head be directed and prescribed by the attendant physician of said penitentiary, in cases where he may consider the same necessary for the promotion of the health of any such convict.

Approved February 10, 1851.

CHAPTER 253.

AN ACT to allow an additional Magistrates' and Constable's District in Pulaski county.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That there is allowed to the county of Pulaski an additional magistrates' and constable's district, to be known as district No. 10, and bounded as followeth : beginning at Gen. John Griffin's, on line of district No. 1 ; thence with the road leading from Somerset to Randolph's medical springs, to John Roper's ; thence a straight line to the head of Bear creek ; thence down the same to Rockcastle river, and down the same to Cumberland river ; thence down the same to district No. 8, and with said district No. 8 to district No. 1 ; thence with the same to the beginning ; and the place of voting in said district shall be at the house of George W. Hamilton.

Approved February 10, 1851.

CHAPTER 262.

AN ACT requiring Assessors of Tax to return the names and Post Offices of the Deaf and Dumb children, in the several counties.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That from and after the present year, it shall be the duty of the several assessors of tax within this commonwealth to return on the back of their books, respectively, the names of each of the deaf and dumb children between the ages of seven and twenty one years, inclusive, in their said several counties, together with the name of the post office nearest the place of residence of each mute.

Approved February 17, 1851.

CHAPTER 263.

AN ACT to repeal an act, entitled, an act to establish an additional Justices' and Constable's district in Fulton county.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That an act, entitled, an act to establish an ad-

ditional justices' and constable's district in Fulton county, approved January 21, 1851, be and the same is hereby repealed, and the districts as arranged by the commissioners appointed to district said county shall be and remain the same as though the above recited act had not been passed.

1851.

Approved February 17, 1851.

CHAPTER 265.

AN ACT to change the place of voting in the fifth district for the election of Justices of the Peace and Constable, in Trigg county.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That the place of voting in the fifth district, in Trigg county, for the election of justices of the peace and constable, be and the same is hereby changed from the baptist meeting house, near Donaldson creek, to the town of Canton, in said district.

§ 2. That all elections hereafter to be held for the above named officers shall take place in the town of Canton.

Approved February 17, 1851.

CHAPTER 279.

AN ACT to run and re-mark the boundary lines between the counties of Lewis and Mason.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That Hezekiah Jenkins, Thomas Glascock, Thomas Marshall, and Mark Wallingford, or a majority of them, are hereby appointed commissioners to run and re-mark the boundary line between the counties of Mason and Lewis—commencing at the mouth of Crooked creek, on the Ohio river; thence to the corner of Mason and Lewis, on the north fork of Licking river.

Commissioners appointed—their duty.

§ 2. It shall be the duty of the surveyors of the counties of Mason and Lewis to attend the commissioners, at the place and time pointed out by them, to run and re-mark the said line, and they shall make out a report and plat of their survey and send a copy of the same to the secretary of state, to be by him filed in his office as part of the records, and a copy to each of the clerks of each of the counties of Lewis and Mason, who shall record the same in their order book.

Surveyors of Mason and Lewis to attend.

§ 3. The county courts of Mason and Lewis, at their court of claims after the performance of the duties required under this act, shall make a just compensation out of the county treasury to the said commissioners, surveyors, and clerk, for the duties herein enjoined on them.

Compensation—how paid.

Approved February 17, 1851.

1851.

CHAPTER 281.

AN ACT to provide for the interment of the remains of the Kentuckians who fell at Raisin.

Whereas, it is represented that the governor has caused to be brought to this city the remains of the citizens of Kentucky who fell at Raisin, which remains were recovered and brought to Covington by Col. Brooks, of Monroe, Michigan. Therefore,

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the governor be authorized to draw from the treasury, on the warrant of the second auditor, a sum not exceeding eighty dollars, to pay the expenses of the transportation and interment of said remains.

Approved February 17, 1851.

CHAPTER 282.

AN ACT to allow an additional Magistrates' and Constable's district in the county of Barren.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky,* That the commissioners appointed to lay off Barren county in magistrates' and constables' districts, shall have the right to withdraw the report heretofore made by them upon that subject.

§ 2. That said county of Barren shall be laid off into nine districts, and that said commissioners shall so lay off and divide the southern part of said county as to make four districts out of that portion which they heretofore laid off into three districts, making two of the four districts east of the Glasgow and Tompkinsville road, running by Jonathan Quigley's, and two west of that road.

§ 3. That said commissioners shall so change the northern boundary, or line of district No. 1, as to make it run with the road from Myers' mill to Short's mill; and that they shall make such alterations in the lines of the districts Nos. 4 and 5 as the above named change in the line of No. 1, shall make necessary.

§ 4. That said commissioners shall report to the proper authorities, as now required by law, by the tenth day of March next.

Approved February 17, 1851.

CHAPTER 309

AN ACT to change Magistrates' and Constable's districts No. 4, in Green; No. 1 in Crittenden, and the Lewisburg and Maysville districts in Mason county.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky,* That district No. 4, in the county of Green, for the election of magistrates and a constable, be

District No. 4,
in Green changed.

so altered that it shall include the old improvement of Levi Summers, which is situated eastwardly from the Nashville or Sidebottom's road, and which place is now owned by Edward F. Towles.

1851.

§ 2. That the boundary of the magistrates' and constable's district, in Mason county, known as the Lewisburg district, be so altered as to include the residence of Walter Calvert; and the Maysville district in said county be so changed as to include the residence of Moses Dimmit and Sinclair Dimmit.

Boundary of districts in Mason changed.

§ 3. That the boundary of the magistrates' and constable's district No. 1, in Crittenden county, be so changed as to include the residence of George Davis.

One in Crittenden changed.

Approved February 25, 1851.

CHAPTER 312.

AN ACT changing the spring term of the Calloway and Graves Circuit Courts.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky,* That the spring term of the Calloway circuit court, for the year 1851, shall commence on the first Tuesday following the second Monday in May, and continue eleven juridical days, if the business shall require it.

Calloway.

§ 2. That the spring term of the Graves circuit court, for the year 1851, shall sit on the fourth Monday in May, and continue twelve juridical days, if the business require it. This act shall not apply to any terms of said court, except the approaching spring terms.

Graves.

Approved February 25, 1851.

CHAPTER 315.

AN ACT to establish District No. 7, in the county of Laurel, and for other purposes.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky,* That so much of the county of Laurel, as is included within the following boundary, shall be and the same is hereby established as the seventh magistrates' and constable's district, viz: beginning at Evans' ferry, on Rockcastle river; thence with the Pulaski road to the point of the ridge between John Woods' and William Taylor's; thence down the point to the Sugar Camp branch; thence down said branch to Woods' creek; thence a straight line to Bull's old place, on the Crab Orchard road, including Nimrod Loving; thence with Bull's branch to the Laurel branch; thence down said branch, excluding McNeill's mill, to the county road; thence a direct course across Hazle patch creek, to the point of the ridge above

7th district in Laurel—its boundary.

1851.

the mouth of Forbes' mill creek ; thence with that ridge to the Salt Works road, where John Forbes', jr. road comes into said road; thence with Forbes' road to Rockcastle river, excluding said Forbes; thence down Rockcastle river, with the county line, to the beginning.

Place of voting in 7th district.

§ 2. That the place of voting in said district shall be at the house of Moses Kemper, and shall be designated and known as Little Rockcastle district.

Place of voting in 3d district.

§ 3. That the place of voting in the third or Hazle-patch district, shall be at the house of Mark Hardin, and shall be designated and known as Raccoon creek district.

Change in 3d and 4th districts

§ 4. That Pleasant Johnson is hereby stricken from the fourth and added to the third district, as follows, viz: beginning at James Wyatt's old place on the south fork of Rockcastle river; thence up said fork to the mouth of the right hand fork of said south fork; thence up said right hand fork to the mouth of the foot ridge branch; thence up said branch, so as to include said Johnson, to the top of the ridge; thence with said ridge to the Wyatt road.

Line between London and Raccoon districts changed.

§ 5. That the line between the London and Raccoon district be amended so as to keep the dividing ridge between Woods' creek and little Raccoon, Gillis' branch and Hazle-patch creek to Bull's old place, on the Crab Orchard road, so as to include Fielding Pitman in the London district.

District in Whitley changed.

§ 6. That the citizens residing on the left hand fork of Wolf creek, in Whitley county, be and they are hereby taken from the third district, in said county, and are hereby attached to the fourth district in said county.

Duty of Secretary of State.

§ 7. That the secretary of state be and he is hereby directed to forward a copy of the above act to the clerks of the county courts of Laurel and Whitley immediately upon its passage.

Approved February 25, 1851.

CHAPTER 327.

AN ACT to change the time of holding the Court of Claims in Fayette county.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the time of holding the court of claims in Fayette county, for the present year, be and the same is hereby changed from the second Monday in May, as heretofore, to the second Monday in April.

Approved February 25, 1851.

CHAPTER 333.

1851.

AN ACT authorizing Christian county to be divided into not less than seven nor more than eleven districts, for the election of Justices of the Peace and Constables.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That the commissioners appointed to divide Christian county into magistrates' and constables' districts, by an act, entitled, "an act appointing commissioners to divide the counties of this state into districts, for the election of justices of the peace and constables," approved December 12, 1850, and those hereinafter appointed, are hereby authorized and required to divide and lay off said county into any number of districts, not less than seven, nor more than eleven districts, for the election of justices of the peace and constables; and that said commissioners, or a majority of them, may reconsider and annul any former action in dividing said county, and establishing the precincts therein, and shall have until the 17th day of March, 1851, to make final returns of the districts in said county, as provided for in the 17th section of the said act, approved 12th of December, 1850.

Commissioners to divide the county, and lay off new districts

Further time given to report to secretary of state.

§ 2. That it shall be the duty of the secretary of state to forward to the sheriff, and the clerk of the Christian circuit court, each, a copy of this act; and said sheriff shall summon all of said commissioners together, within seven days after the receipt thereof, at the county seat of said county, and lay this act before them.

Secretary's duty

§ 3. That Aquilla Long, W. W. Johnson, R. F. Kelly, Miller Woodson, Abram Keener, James F. Thompson, John D. Crafton, and John B. Knight, be and they are hereby appointed additional commissioners for Christian county, to act in conjunction with those already appointed by said act, and approved December 12, 1850.

Additional commissioners appointed.

Approved February 27, 1851.

CHAPTER 338.

AN ACT to change the place of voting from Mason Gardner's to John F. Blandford's, in Marion county.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That, from and after the passage of this act, the election precinct to be held at the house of Mason Gardner, in Marion county, by virtue of an act of the general assembly, approved December 12, 1850, providing for the districting of the several counties into justices' and constables' districts, be and the same is hereby removed to the house of John F. Blandford, to be called the Livers' Springs precinct, and all elections in the district shall hereafter be held at said precinct, and shall be conducted under the laws now in force upon the subject of elections.

Approved March 3, 1851.

1851.

CHAPTER 342.

AN ACT to provide for the appointment of Circuit Judges, *pro tem*.In case judge
fails to attend
election may be
held.

Who to vote.

If a tie, Clerk
to give casting
vote.*Pro tem*. judge
to take oath.

Compensation.

Duty of clerk.

If judge refus-
es to act anoth-
er election to be
held.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That when any judge of a circuit court in this state shall fail to attend at the time and place fixed by law for holding the court of which he is judge, or, if in attendance, said judge cannot properly preside, it shall be the duty of the clerk of said court to cause an election to be held (at which the practicing attorneys at law in said court alone shall be permitted to vote) for a suitable person to act as judge; and if, in said election, there be a tie between the persons obtaining the highest number of votes, said clerk shall give the casting vote; and the judge, thus chosen, shall act as judge during the absence of the circuit court judge, or in such case or cases as the circuit court judge cannot properly preside, and whose powers, authority, duty, and responsibilities shall be the same as those of the circuit court judge.

§ 2. Before any person, selected as aforesaid to act as judge, *pro tem*., shall enter upon the duties of his office, he shall take the same oaths required by the constitution and laws of this state to be taken by circuit court judges.

§ 3. Said judge, *pro tem*., shall receive, as a compensation for his services, a sum bearing the same proportion to the circuit judge's salary as the time he may serve shall bear to the length of the judicial time in said circuit, and it shall be the duty of the clerk to make a minute of the proceedings on his record book, and certify to the auditor of public accounts the time said judge, *pro tem*., was engaged in the business of said court, (unless the said judge, *pro tem*., shall direct the clerk to enter on his record that no compensation is asked for by said judge, *pro tem*.,) and the auditor shall issue a warrant upon the treasurer for the amount which said judge, *pro tem*., may be entitled to; which amount shall be deducted out of the salary of the circuit judge by the auditor.

§ 4. If the judge, elected as herein prescribed, shall fail or refuse to act, or cannot properly preside, another election shall be held in the same manner, from time to time, until a suitable person is chosen, who will and can properly preside.

Approved March 3, 1851.

CHAPTER 350.

AN ACT to legalize the appointment of Assessors of Tax, by the County Court of Daviess, at their February term, 1851.

Whereas, it is represented to this general assembly that Joseph G. Harrison and George C. Sebastian were appointed assessors of tax at the February term of the Daviess

county court, and that said commissioners, or assessors, were appointed without a majority of the justices of Daviess county being present. Therefore,

1851.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the act of said county court be, and the same is hereby legalized; and the appointment of said commissioners, and their acts under said appointment, shall be as valid, in all respects, as if they had been appointed by a majority of the justices of said court.

Approved March 3, 1851.

CHAPTER 360.

AN ACT to regulate the commissions of Sheriffs on the collection of taxes imposed by County Courts, on the *ad valorem* principle.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That sheriffs shall be allowed to retain, for the collection of taxes imposed by county courts, on the *ad valorem* principle, the same commission allowed to sheriffs for the collection of the revenue tax: *Provided,* that this act shall not be construed to repeal any law making a different allowance to sheriffs in such cases.

Approved March 3, 1851.

CHAPTER 361.

AN ACT to amend the Common School laws.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That when the proper authorities of any common school district shall have selected a site for a school house, and have commenced its erection; or where the same shall have been erected, or procured for common school purposes; or where a district shall have been established, and a school taught in it under the law, it shall not be lawful for the commissioners for the county, or any of them, to change the site of said school house, or dispose of the building for other purposes than a school, or to divide the district, or alter, or in any way change its boundaries, until after they shall have submitted their propositions to the qualified voters of said common school district, and the same shall have been approved of by a majority of the whole of said voters in the district. And to ascertain this, it shall be the duty of the trustees of said district, when required by said commissioners, to hold an election to take the sense of the voters thereof on the proposition submitted to them; and ten days' notice shall be given of the time and place of holding said election, the result of which shall be entered on the records of said district by them, and certified to the commissioners. The notice of said election shall

When school house shall have been erected not to be changed unless voted for by majority of the district.

1851.

be by public advertisement set up at three or more of the most public places in said district.

Approved March 3, 1851.

CHAPTER 371.

AN ACT relative to holding elections in certain districts in Owen and Mason counties.

Place of voting
in Owen chang-
ed.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That the place of voting in district No. 9, for the election of justices of the peace and constable, in Owen county, shall be at the tavern house of Joel T. Garvey, instead of at the storehouse of Jeremiah Garvey, as fixed by the commissioners appointed to divide said county into districts aforesaid, by an act of the General Assembly, approved December 12, 1850.

Place of voting
in Sardis pre-
cinct may be fix-
ed by judges or
sheriff.

§ 2. That the voting place in the town of Sardis, in Mason county, as fixed by the commissioners to divide said county into justices' and constables' districts, under the act aforesaid, may be at the house of Peyton White, or at such other suitable and convenient place, within said town, as may be selected by the judges and sheriff of the elections to be held in said town, which selection the said judges and sheriff are hereby empowered to make.

Approved March 3, 1851.

CHAPTER 378.

AN ACT to change the place of voting in the 4th district, in Cumberland county.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the voting place in the fourth magistrates' district, in Cumberland county, shall be at the house of Miles Williams, instead of Michael Davidson's, and that all elections for United States officers, and state, county, and district officers shall be held at the house of said Williams.

Approved March 3, 1851.

CHAPTER 379.

AN ACT in relation to Justices' and Constables' districts in Fleming county

Ten instead of
seven districts.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That instead of seven, there shall be ten districts for the election of justices of the peace and constables in the county of Fleming.

Names of com-
missioners.

§ 2. That Benjamin Harbeson, Mason Caywood, James C. Sousley, Joel De Bell, Joseph Secrests, Simpson Riffin,

and Dixon Clack, are hereby appointed commissioners to lay off three additional districts in said county.

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§ 3. That said commissioners, or a majority of them, shall form one district out of the present Flemingsburg or No. 7 district, the Pinhook or No. 5 district, and the Centreville or No. 6 district, establishing the voting place thereof at Elizaville. They shall form another district out of the Pinhook or No. 5 district, with the voting place at Sherburn. They shall form the 3d district out of the Triplett or No. 1 district, fixing the voting place thereof at some position therein as nearly central as may be.

Com'rs duty.

§ 4. Said commissioners, in forming said third additional district, if in their judgment it be necessary to do so, to equalize the voting population, may cut off portions of the present Hillsborough or No. 4 district, and Poplar Plains or No. 3 district, and add thereto; and they may, after forming the Elizaville district, as required in this act, enlarge (but not diminish) the then Flemingsburg district, if they deem it necessary to do so, by adding thereto portions of the Pinhook or No. 5 district, Poplar Plains or No. 3 district, and Mount Carmel or No. 2 district.

To equalize voters if desirable by reducing other districts.

§ 5. In forming said districts as directed in this act, said commissioners in all other respects, shall be governed by the provisions of an act, entitled, an act appointing commissioners to divide the several counties of this state into districts, for the election of justices and constables, approved December 12, 1850. They shall make out two copies of their report, and return one to the clerk of the Fleming county court, and the other to the secretary of state, on or before the 15th day of March next. It shall be the duty of the clerk of the Fleming county court to record said report, so delivered as aforesaid, for which he shall be allowed the same fee as provided in the above named act for like services.

To be governed by acts appointing com'rs.

Duty of Clerk and his compensation.

§ 6. Two justices of the peace and a constable shall be elected in each of said additional districts by the qualified voters therein, under the provisions of the constitution.

Two justices and one constable to each district.

Approved March 3, 1851.

CHAPTER 380.

AN ACT allowing additional Justices' and Constables' districts in Hardin county.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the commissioners heretofore appointed by an act, entitled, "an act to divide the counties of this state into districts for the election of justices of the peace and constables, approved December 12, 1850," to lay off the county of Hardin into justices' and constables' districts, be and they are hereby authorized and directed to lay off

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two additional districts in said county, out of parts of districts Nos. 1 and 8, as now formed, the said commissioners being guided in laying off said additional districts by the provisions of the above recited act. And they are hereby required to make out a report of said districts, and forward a copy thereof to the secretary of state, on or before the 25th day of March, instant.

Approved March 4, 1851.

CHAPTER 382.

AN ACT allowing an additional Magistrates' and Constables' district in Scott county.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That in addition to the justices' and constables' districts laid off and reported by the commissioners heretofore appointed for the county of Scott, there shall be one additional district, bounded as follows: beginning on the north side of the Turkey Foot road, opposite the shop of Landrum Maddox; thence with said road to the dividing ridge between the waters of Eagle creek and Elkhorn; thence with said ridge to the Muddy Ford road; thence with said road to the Muddy Ford; thence up Eagle creek to the Hammond's Mill road; thence with the same to Holden's fork of Eagle creek; thence with the same, and the Lee's Lick road, to the Harrison county line; thence with said line to Isaac Shuff's; thence with the south Georgetown road to the dividing ridge between Miller's run and Lane's run; thence with said ridge to the north Georgetown road; thence with said road to Lane's run; thence up Lane's run to the Dry run road; thence to the beginning; which district shall be known as the eighth district, and the place of voting shall be at the town of Oxford.

§ 2. That the secretary of state be directed to forward a certified copy of this act to the clerk of the Scott county court for record.

Approved March 7, 1851.

CHAPTER 383.

AN ACT to extend the duty of Commissioners of Tax.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That from and after the 10th day of January next, it shall be the duty of the several commissioners of tax in this commonwealth, to open a column in their respective books, in which shall be listed the number of hogs over six months old, in each of the counties of this state;

which, said lists of hogs, shall be reported by said commissioners, in like manner as other lists of property are now, by law, required to be reported by said commissioners.

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Approved March 8, 1851.

CHAPTER 392.

AN ACT to apportion representation.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That the representation for the house of representatives shall be apportioned among the several counties of the commonwealth in the following manner, viz :

Representation
in the House.

To the first district, ten representatives, as follows: to the county of Graves one, Caldwell one, Hopkins one, Trigg one, Union one, Calloway one, Crittenden one, Livingston and Marshall one, Fulton and Hickman one, McCracken and Ballard one.

1st district.

To the second district, ten representatives, as follows: to the county of Muhlenburg one, Henderson one, Ohio one, Breckinridge one, Meade one, Grayson one, Hancock one, Butler and Edmonson one, Daviess one, Christian one.

2d district.

To the third district, nine representatives, as follows: to the county of Todd one, Logan one, Simpson one, Warren one, Allen one, Monroe one, Barren two, Hart one.

3d district.

To the fourth district, nine representatives, as follows: to the county of Adair one, Green one, Wayne one, Pulaski one, Boyle one, Lincoln one, Cumberland and Clinton one, Casey and Russell one, Taylor one.

4th district.

To the fifth district, ten representatives, as follows: to the county of Hardin two, Larnie one, Bullitt one, Spencer one, Nelson one, Washington one, Marion one, Mercer one, Anderson one.

5th district.

To the sixth district, ten representatives, as follows: to the county of Madison two, Garrard one, Whitley one, Knox and Harlan one, Laurel and Rockcastle one, Letcher, Pike, and Perry one, Clay and Owsley one, Floyd and Johnson one, Estill one.

6th district.

To the seventh district, eleven representatives, as follows: to the city of Louisville four—thus, to the first and second wards one, to the third and fourth wards one, to the fifth and sixth wards one, and to the seventh and eighth wards one, the county of Jefferson two, Shelby two, Henry one, Oldham one, Trimble and Carroll one.

7th district.

To the eighth district, eight representatives, as follows: to the county of Fayette two, Bourbon one, Scott one, Owen one, Franklin one, Woodford one, Jessamine one.

8th district.

To the ninth district, ten representatives, as follows: to the county of Clarke one, Montgomery one, Bath one, Greenup one, Lewis one, Carter one, Lawrence one, Fleming two, Morgan and Breathitt one.

9th district.

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10th district.

To the tenth district, thirteen representatives, as follows : to the county of Mason two, Bracken one, Nicholas one, Harrison two, Pendleton one, Campbell one, Kenton two, Boone one, Gallatin one, Grant one.

Senatorial
representation.

§ 2. That for the purpose of apportioning the representation in the senate, the state is hereby laid off into thirty eight senatorial districts, as follows, viz: the counties of Hickman, Ballard, Graves, and Fulton, shall compose the first senatorial district; Union, Hopkins, and Crittenden, the second; Christian and Todd, the third; Logan, Simpson, and Butler, the fourth; Daviess and Henderson, the fifth; Warren, Allen, and Edmonson, the sixth; Barren and Monroe, the seventh; Green, Hart, and Taylor, the eighth; Clinton, Cumberland, Wayne, and Russell, the ninth; Casey, Adair, and Boyle, the tenth; Livingston, Caldwell, and McCracken, the eleventh; Breckinridge, Grayson, and Hancock, the twelfth; Ohio and Muhlenburg, the thirteenth; Hardin and Meade, the fourteenth; Jefferson county, two senators—thus, the first, second, third, fourth, fifth, and sixth wards of the city of Louisville, one, the fifteenth; and the seventh and eighth wards of said city, and the residue of said county, one, the sixteenth; Trimble, Oldham, and Henry, the seventeenth; Shelby and Spencer, the eighteenth; Nelson, Larue, and Bullitt, the nineteenth; Marion and Washington, the twentieth; Mercer and Anderson, the twenty-first; Calloway, Trigg, and Marshall, the twenty-second; Lincoln and Pulaski, the twenty-third; Madison and Garrard, the twenty-fourth; Laurel, Whitley, Knox, and Rockcastle, the twenty-fifth; Gallatin, Carroll, and Boone, the twenty-sixth; Kenton and Campbell, the twenty-seventh; Bourbon and Bath, the twenty-eighth; Grant, Pendleton, and Owen, the twenty-ninth; Harrison and Bracken, the thirtieth; Fayette and Scott, the thirty-first; Woodford, Jessamine, and Franklin, the thirty-second; Clarke, Montgomery, and Estill, the thirty-third; Carter, Greenup, and Lawrence, the thirty-fourth; Fleming and Nicholas, the thirty-fifth; Mason and Lewis, the thirty-sixth; Floyd, Morgan, Johnson, and Pike, the thirty-seventh; and Clay, Harlan, Owsley, Letcher, Perry, and Breathitt, the thirty-eighth.

How polls to
be compared.

§ 3. That in order to ascertain the state of the polls, where two or more counties compose a senatorial district, or two or more counties are joined to elect a representative, the sheriffs of such counties shall meet at the court house of the county first named, to compare the polls, on the first Monday next after the commencement of the election; and after having ascertained, by faithful comparison and addition, the number of their respective polls, shall make return of the persons elected, in the manner prescribed by law: *Provided*, that when a writ of election shall be issued by the governor, or either branch of the leg-

islature, an earlier day may be ordered in such writ for comparing the polls, if it should be deemed expedient.

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§ 4. That if any new county should be established before the next enumeration and apportionment of representation, it shall be considered as part or parts of the county or counties from which it was taken, for the purpose of representation.

How new
counties shall
vote.

Approved March 8, 1851.

CHAPTER 396.

AN ACT further to provide for the collection of tolls on Kentucky, Green, and Barren rivers.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That it shall be the duty of the collectors of tolls on the Kentucky, Green, and Barren rivers, to administer to the officers of steam, flat, and keel-boats, plying on said rivers, such oaths or affirmation in reference to their manifests of freight and passengers, upon which tolls are collectable, as are now prescribed by law to be administered by justices and notary publics.

Duty of Collect
or.

§ 2. The collectors on said rivers shall not receive tolls on any manifest presented to them, until the owner, master, clerk, or other officer producing the same shall make oath before him that said manifest contains a full and complete statement of the passengers and freights transported by such boat for the trip it purports to represent, agreeably to the rules and rates prescribed by the board of internal improvement for the payment of tolls.

Collector not to
receive manifest
until sworn to.

§ 3. It shall be the duty of any collector on said rivers, who shall have reasonable ground to believe any fraud has been practiced by the rendering of false manifests, to visit any points on said rivers at which he may have reason to suspect such fraud may be detected, and exert himself diligently to obtain evidence thereof. Such collector shall appoint a responsible person as his deputy to receive toll during his absence, whose duties shall be the same, and whose acts shall be as binding upon all persons concerned as those of the collector himself: *Provided, however*, that the principal collector shall be responsible for the faithful discharge of the duties of his office, whether performed by himself or his deputy: *And, provided further*, that the collector shall, during his absence on business required by this section, receive one dollar and fifty cents per day and his traveling expenses, for the time he may be necessarily engaged.

Collector's du-
ty when he sus-
pects fraud, &c.

§ 4. Any steamboat that shall pass over any of the dams on either of said rivers, without landing at the collector's office and rendering a true manifest and paying full tolls, or any boat passing themselves through a lock with-

Liability of
boats for any vi-
olation of this
act.

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out paying tolls, or any boat that shall render a false or fraudulent manifest, for the purpose of evading the payment of full tolls, shall pay the sum of four hundred dollars for the tolls for such offense; and the said boat shall be considered indebted to the commonwealth in that sum; and the boat itself shall be liable for that sum; and each and every clerk, master, and shareholder shall also be liable for the same, and may be sued, jointly or severally, for the same, by attachment against the boat, or by action of debt or other appropriate action.

Duty of commonwealth's attorney, &c.

§ 5. It shall be the duty of the commonwealth's attorney, prosecuting in any court having jurisdiction, to bring and prosecute such claims, upon the request of the collector; and said attorney shall receive, for his fees, one-fourth of the sum collected in such action, and the remainder shall be paid into the treasury, as other tolls. The collector shall receive, for his attendance on such suits, the same compensation allowed him in the third section of this act.

Officers of boats, &c., who make false manifests, guilty of perjury.

§ 6. Each and every clerk, master, owner, or other officer of any steamboat, flatboat, raft, or craft, making oath to a false or fraudulent manifest, with the intent to defraud the commonwealth of tolls, shall be guilty of perjury.

Approved March 8, 1851.

CHAPTER 419.

AN ACT to organize County Courts in the several counties.

Office of associate judges abolished.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky,* That the office of the associate judges of the county court, created by the twenty ninth section of the fourth article of the constitution, be and the same is hereby abolished.

A county court established, and time of holding.

§ 2. That a county court, composed of the presiding judge elected by the people—except when the justices of the peace are associated with him, as hereinafter provided—shall be held in the several counties of this commonwealth, on the days and at the places of holding existing county courts, as now directed by law; which court shall have and possess the same powers and jurisdiction conferred by existing laws upon the county courts in this commonwealth, and shall, in all things, be governed by the laws now in force regulating the jurisdiction and proceedings in the existing county courts, except so far as the same may be changed or altered by this act.

Jurisdiction.

§ 3. The county court, at the October term thereof, in each year, shall audit and settle the claims against the county, make provision for the poor, and all necessary appropriations for the improvement of roads, building and re-

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pairing of bridges and public buildings; and, at the same time, said court shall lay and direct the levy to be collected, and shall do all things in relation to the financial affairs of the county which the existing county court may now lawfully do; and in those counties where a circuit court is holden in the month of October, the judge and justices of such counties, respectively, shall attend their November term for the purposes aforesaid; and it shall be the duty of the several justices of the peace in the county to attend said court and sit with the presiding judge, and compose a part of said court, for the purposes aforesaid; and the said presiding judge and a majority of the justices of the peace of the county, shall be sufficient to constitute a court for the purposes aforesaid; and the justices who shall attend and constitute said court, shall be allowed one dollar per day, each, to be paid out of the county levy; and, if the presiding judge shall deem it proper to make an appropriation to be paid out of the county levy at any other than the October term aforesaid, he shall have power to order a summons to be issued against the justices of the peace in his county, requiring them to attend at such term of said court as he may designate; and, upon a majority of the justices attending, they, with said judge, shall have power to make such appropriations as are proper and necessary; and the court, at such term, may adjourn from day to day, until a majority of the justices appear, and the business for which they have been convened is completed: *Provided*, that the presiding judge of the county court shall, at any other than the court at which the claims are audited, as aforesaid, have the power to make appropriations of sums not exceeding fifty dollars, without requiring the attendance of the justices of the peace aforesaid; but the appropriations made by said presiding judge shall not exceed one hundred dollars at any one term.

§ 4. Should a majority of the justices fail to attend said court, it shall be the duty of the presiding judge and the justices present, or of either of the presiding judge or justices who may be present, to order a summons against the justices failing to attend, and to compel their attendance, by attachment or otherwise; and said court may adjourn from day to day, until a majority of the justices in the county shall be in attendance, and the necessary business of the court shall have been transacted.

§ 5. The records of the existing county courts shall be held and regarded as the records of the courts hereby organized in the same counties, respectively; and all the records of the clerk's office, and all the official papers and records pertaining thereto, in the several counties, shall be kept, held, and regarded as the official papers and records of the clerk's office of the county courts hereby organized in the same counties; and said records and papers, or copies thereof, properly certified by the clerks of the seve-

County court, to audit and settle claims—lay and direct the levy—and what time.

Pay of justices for attendance.

When and how appropriation to be made.

Presiding judge may audit and settle claims not exceeding \$50.

Summons & attachm'ts may be issued to compel attendance of justices.

Records of existing county courts to be records of courts hereby established, and copies to have same effect.

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Papers to be kept in same office.

Clerks and sheriffs to perform same duties as at present.

Clerk not to practice in his court, nor suffer a law office to be kept in cl's office.

Judge to make all settlements with executors, &c., and compensation.

If judge is interested, clerk to act as commissioner.

To hold quarterly terms, and keep records.

To whom executions to be directed.

ral courts hereby organized—to whom the custody of such papers and records is given—shall be record evidence in all courts in this commonwealth, to the full extent that such papers and records now are, when properly certified by the proper officer; and, until otherwise directed by law, such papers and records, as well as the records and papers of the court hereby organized, and the official papers and records of the clerk of the court hereby organized, shall be kept in the same offices and in the same manner that they are now kept by the clerks of the existing county courts.

§ 6. The clerk of the court hereby organized, and the sheriffs of the several counties, shall discharge the same official duties in their respective counties which the same officers now do under existing laws; and they shall be officers of the county court, bear the same relation thereto, perform the same duties therein, as like officers do in and to the existing county courts: *Provided*, that the county court clerk shall not practice as an attorney at law in the court in which he is clerk; nor shall he suffer or permit any practicing lawyer to have or keep his office in any room where the records and papers of said clerk's office shall be kept.

§ 7. The presiding judge of the county court shall make all settlements with executors, administrators, and guardians, within his county; and, in making such settlements, he shall be governed by the laws now in force, regulating the duties of the standing commissioners appointed by the existing county courts—so far as the same are applicable—and for which he shall receive one dollar and fifty cents for each settlement, unless the same shall occupy more than one day; and if it should, then one dollar and fifty cents per day, to be paid as the standing commissioners are now paid for similar services: *Provided*, that when the judge may be interested personally, the clerk of the county court shall act as commissioner.

§ 8. The presiding judge of the county court shall hold quarterly terms in each year, at the seat of justice of his county, for the trial of all causes brought before him, at which he shall preside; he shall enter in a well-bound book, to be kept for that purpose, all orders, judgments and decrees, by him given or rendered, all executions by him issued, with the time of issuing the same, the amount of such execution, the return day thereof, and the day on which the same shall have been returned; and all executions issued by the said presiding judge shall be directed and delivered to the sheriff or constable of his county, as now required by law; and the officer receiving the same shall be governed, in all things, by existing laws in relation to similar executions issued by circuit court clerks or justices of the peace, and shall be liable to the same pains and penalties: *Provided*, that in all cases where the sheriff is an interested

party, such execution may be directed to the coroner, or any constable of his county, by name.

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§ 9. The presiding judge of the county court shall have concurrent jurisdiction, both at law and in equity, with justices of the peace, in all cases where jurisdiction is conferred by existing laws on justices of the peace, and with the circuit courts in all sums over fifty and under one hundred dollars; and in all actions of trespass and trespass on the case, and writs of replevin, where the damages complained of do not exceed one hundred dollars—except where the title or boundaries to land may be in controversy—under the same rules and regulations as are now prescribed by law, conferring jurisdiction on justices of the peace and circuit courts in this commonwealth; and said presiding judge shall be allowed the same fees as are allowed by law to justices of the peace and clerks of circuit courts, for similar service.

Jurisdiction of county court.

Fees allowed same as clerks circuit courts, & justices.

§ 10. That the presiding judge of the county court shall be a conservator of the peace within his county, and shall have all the power and jurisdiction in cases of riots, routs, and unlawful assemblies, breaches of the peace, and of all misdemeanors, now conferred by law on justices of the peace, subject to the same rules and regulations; and he shall have power, by his warrant, directed to the sheriff or any constable of his county, to cause persons charged with a violation of the penal laws of this commonwealth, to be apprehended and brought before him, and to take the recognizance of such person, so charged, to appear and answer the same, or to commit such person to prison, there to remain until discharged by due course of law; and in all such proceedings he shall be governed by existing laws regulating the powers and proceedings of justices in similar cases.

Judge to be conservator of peace—jurisdiction in criminal cases.

§ 11. The presiding judge of the county court shall have power to grant writs of injunction, attachment in chancery, and writs of *ne exeat* in all cases; and where the amount in controversy does not exceed the sum of one hundred dollars, he shall hear and determine the same. He shall have power to grant writs of *habeas corpus*, and hear and determine the same. He shall have concurrent jurisdiction with the circuit courts in granting writs in relation to idiots and lunatics; and in all such cases he shall be governed by the laws now in force regulating the proceedings of circuit courts in similar cases.

Judge may grant injunctions, &c., &c.

§ 12. Every person who shall be guilty of false swearing before the presiding judge, shall be deemed guilty of felony, and punished accordingly.

False swearing felony.

§ 13. That either party to a suit before a justice of the peace shall have the same right of appeal to the county court as is now given by law, and under the same rules and regulations; and parties to suits commenced before the presiding judge shall have the right of appeal from his decision.

Appeal may be taken from justices to county court.

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tion to the circuit court of the county, under the same rules and regulations as are now prescribed by law in cases of appeals from justices of the peace to the circuit courts, in cases over five pounds.

County judge to give copies of his records, and when certified by clerk to be evidence.

§ 14. That the presiding judge of the county court, when applied to and his fees paid, shall give copies of all orders, judgments, or decrees made and rendered by him, and of all papers filed in his office, and complete records of cases tried and determined by him, under his hand and seal; and all such copies of records, &c., with the certificate of the clerk of the county court, and the seal of his office annexed, that said judge is the presiding judge of the county court of his county, shall be received as evidence in any court in this commonwealth.

Tax on actions before county judge over \$50, and to be paid into treasury.

§ 15. That in all suits brought before said presiding judge—where the amount in controversy shall be over fifty dollars—a tax of fifty cents shall be paid by the plaintiff, and taxed in the bill of costs against the defendant, in all cases where judgment is rendered against him; and the presiding judge shall, in the month of November in each year, make out and certify to the auditor a list of such taxes received by him, and shall pay the same to the treasurer, under the same rules and regulations as are now prescribed by law, directing the clerks of circuit courts to certify and pay taxes on law process.

If personal estate is insufficient to pay debts, real estate and slaves to be sold by order of county court.

§ 16. Whenever an administrator or executor shall, by a petition in writing, filed and sworn to by him in the county court, state and represent that the personal estate is insufficient to pay the debts or legacies, or both, and shall exhibit an inventory of the assets, as near as may be, with his petition as part thereof, and shall set forth the debts due from said estate, it shall be the duty of the county court judge to examine into the same, and if there be real estate or legacies of personal property or slaves in the will, or which descended to heirs, he shall cause summonses to be issued against the widow and heirs, or devisees, returnable to next court, if in the state, or if non-residents he shall enter on the record warning orders against them, returnable to next court, and in the latter case, appoint the county attorney, or some other attorney, to represent them; and when the parties are before the court, by service or warning order and traverse, he shall hear the case; and if, on hearing, he shall be of opinion that real estate, legacies, or slaves, or any or all, will be necessary to pay debts, he will enter an order on the records requiring the same to be sold, and prescribe the terms of sale, and appoint a commissioner, the executor, administrator, or sheriff, to make the same, and when the purchase money is paid, cause a deed to be made, conveying all the interests of the heirs or devisees: *Provided*, that no power is given hereby to sell the widow's dower, or such property as the laws re-

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serve from execution; but, if the widow will file her consent in writing to a sale of her dower, and expressing her willingness to receive its value in money, then the decree of sale shall include the dower, and she shall receive its value in money; and, from time to time, sales may be made of enough to pay debts, when the parties are once before the court, if other debts appear not represented by the petition, enough to pay such debts and the cost of administration; and the court shall allow the attorney appointed, and all others, reasonable fees for their services; and where the estate is insufficient to pay costs of administration and debts, then the distribution shall be made *pro rata*, saving to the parties entitled by laws now in force the liens allowed them; and, if any party in interest shall deem the order of sale improper, he may appeal to the circuit judge, who shall take all the papers from the county court and decide the question, and certify it to the county court; and, if he decides a sale is not necessary, then no sale shall be made—or, if he affirms the order of the county court, the sale shall proceed; the administrator or executor shall be considered as representing the creditors, or they, or any of them, may enter an appearance as plaintiffs with the executor or administrator, and shall have a right to be heard; and where liens or preferences shall be claimed, issues may be made between parties contending, and be heard and decided by the county court; and from these issues and decisions the parties may appeal to the circuit court, as in other cases; but these appeals shall not remove any more of the cause than is necessary to an understanding of the contest; and, when decided by the circuit judge, he shall certify back to the county court his judgment, which shall be recorded, and the papers taken up shall be returned, or the county judge may cause the parties to agree the points of dispute for the decision of the circuit court, and certify the same, without removing any of the papers; and during the decisions of the questions between disputants, the administration of the estate shall progress, if it can do so, reserving enough to make good what the contestants may be entitled to. After the petition is filed, no suit shall be brought against the administrator or executor, but all claimants against the estate shall file their claims in the county court with the clerk thereof; and proof thereof may be made in said court in term time, or the affidavits required by law may be made before any justice of the peace or the presiding judge of the county court; and where claims are disputed, the same shall be determined on issues formed by the parties, before the county court, as in other cases—or, if over the amount the county court judge has power by law to try, they shall stand for hearing in the next circuit court—that court requiring the parties to frame issues to try the claims set up, or defenses thereto; but the administration shall progress,

Compensation
to be allowed
attorney.

Appeal from
orders of sale
may be made to
circuit court.

No action to
be brought ag't
administ'r after
petition is filed.

If claims are
disputed, to be
tried.

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Chancellor of
Louisville and
circuit court con-
current jurisdic-
tion.

In suits for set-
tlement of es-
tates, publica-
tion to be made.

Cost of adver-
tisement to be
taxed.

When county
judge to enter
on discharge of
his duties.

County judge
not to have ju-
risdiction in ca-
ses less than
\$50 out of his
district without
consent of deft.

Jury to be im-
pannelled in bas-
tardy cases

County judge
may appoint a
commissioner.

Not to appoint
any person de-
signated by either
party.

if it can be done, reserving enough to pay said claim or claims, *pro rata*: *Provided*, that the chancellor of the Louisville chancery court and the judges of the circuit courts shall have concurrent jurisdiction with the presiding judge, in all cases arising under the provisions of this section, within the jurisdiction of said chancery and circuit courts.

§ 17. Whenever suit is brought before the presiding judge, for the settlement of an estate agreeably to the provisions of this act, he shall cause an advertisement to be made, by publication at least four times, by weekly insertions, in any newspaper printed in the county; and if there be none, then in such paper having a circulation in the county as the judge may designate, and by advertisements posted up at four or more public places in the county—one of which shall be at the court house door, and one in the neighborhood of the decedent's last residence—at least thirty days previous, giving notice to creditors to come forward and prove their claims before him, at such times and places as he may designate in the advertisement; and he shall tax the cost of such advertisement with the other costs of the suit.

§ 18. The presiding judges of the county court shall enter upon the duties of their office on the second Monday in June, 1851.

§ 19. That nothing in this act shall be so construed as to authorize the trial of causes of which justices of the peace have jurisdiction, out of the justice's district in which the defendant resides, without the consent, in writing, of such defendant be indorsed on the back of the warrant; and unless such consent be given, the officer executing the warrant shall return the same for trial before some justice of the peace in the district in which such defendant, or some one of them, resides.

§ 20. In all cases of bastardy, the court shall cause a jury to be impannelled to find the facts of the case, and assess the amount to be paid by the defendant, in case the finding of the jury be against such defendant, under the rules and regulations of conducting jury trials in other cases.

§ 21. That the county judge shall have power to appoint a commissioner at his discretion, to settle the accounts of any estate, who shall act under oath, and shall have the same fees as the judge should have for the settlement of such accounts: *Provided*, that the judge shall not appoint as said commissioner, any person who may be designated by any party interested.

Approved March 11, 1851.

CHAPTER 423.

1851.

AN ACT to establish the place of voting in the Keysburg District, in Logan county.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That it may and shall be lawful for the sheriff of Logan county to hold an election in the Keysburg magistrate's district, on the second Monday in April next, for the purpose of determining the place of voting in said district. Said election shall continue but for one day, and polls shall be opened at Ash Spring and at Keysburg, and the question shall be asked of each qualified voter proposing to vote in said district, "are you for Ash Spring or Keysburg?" And when the sheriff shall have compared the polls between said points, he shall publish the result in the Russellville Herald, and a majority of said qualified voters voting at the time aforesaid shall determine and locate said place of voting, which shall so remain until changed by law.

§ 2. Said sheriff shall appoint two discreet house-keepers as judges at each of said points in said district; also, a clerk and sheriff for conducting the election in proper form. The polls shall be compared in the office of the clerk of the county court, who shall enter the result in due form in his office. Said officers shall be sworn to conduct said election before some acting justice of the peace, according to the laws now in force for holding elections.

§ 3. The expenses of holding said election shall be paid by the corporation of Keysburg.

Approved March 12, 1850.

CHAPTER 437.

AN ACT changing the boundary lines of District No. 8, in Carter county.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the place of voting in district No. 8, in Carter county, be changed from John Banfield's to the house of Charles B. Rigg in said district; and that the lines of district No. 8, in Carter county, be so changed as to include those persons living on the head waters of Cain creek, in said county; and that the line of said district be changed from the dividing ridge between the waters of Wilson's and Williams' creeks, to the dividing ridge between Stintson and Wilson's creek, and thence down Sandy river to the county line, so as to include all the citizens living in said district on Wilson's creek, and its waters.

Approved March 15, 1851.

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CHAPTER 464.

AN ACT providing for the election of Public Printer.

- Office of Public Printer established. § 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That the office of public printer for this commonwealth is hereby established, and that a printer or printers to fill the same shall be elected by the joint vote of the two houses of the general assembly at the next session thereof, and every two years thereafter.
- How elected. § 2. That the printer or printers so elected, shall continue in office two years, from and after the first Monday in August succeeding his or their election: *Provided*, that the printers elected the present session shall continue in office until the first Monday in August, 1852; and if, from any cause, a vacancy shall occur in the office of public printer in the recess of the general assembly, it shall be the duty of the governor to appoint some proper person or persons to execute the public printing for the remainder of the time of the person or persons who had been elected by the general assembly.
- Term of office. § 3. That the compensation and duties of the printer or printers, so elected or appointed, shall be the same in every respect as provided by "an act concerning the public printing, approved February 23, 1846."
- Present public printers to continue in office until Aug. 1852.
- Vacancy, how filled.
- Compensation.

Approved March 15, 1851.

CHAPTER 469.

AN ACT to provide for the payment of the interest of the School Fund.

Whereas, doubts are entertained in regard to the liability of the sinking fund for the payment of the principal and the interest of the school fund: Therefore,

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the sinking fund is liable to the payment of the principal and the interest of the common school fund, and the commissioners of the sinking fund are hereby directed to pay, as heretofore, the interest on the school fund, out of any moneys in their hands belonging to said sinking fund, in execution of "an act to provide for the payment and investment of the interest of the bonds of the state of Kentucky, held by the board of education, &c., &c., approved March 1, 1850."

MARCH 14, 1851.

Passed the Senate, the objections of the Governor to the contrary notwithstanding.

Att: J. R. HAWKINS, C. S.

MARCH 19, 1851.

Passed the House of Representatives, the objections of the Governor to the contrary notwithstanding.

Att: T. J. HELM, C. H. R.

CHAPTER 470.

1851.

AN ACT concerning certain Magistrates' Districts in Madison county.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the magistrates' and constable's district, No. 2, in Madison county, be and the same is so changed as to include the residence of Benajah Gentry and Joseph Quisenberry, who now reside in District No. 3; and that the line of district No. 6, in said county, be so changed as to include the farm of Derrett White, jr., who now belongs to district No. 7; and the voting place in district No. 6, in said county, be changed from Hickory Plain school house to Johnson's shop, in said district.

Approved March 20, 1851.

CHAPTER 481.

AN ACT to change the place of voting from Sulphur Well to James Carter's, in Jessamine county.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the place of voting in the third district, in Jessamine county, be changed from the Sulphur Well to the house of James Carter, in said district; and that all elections in said district shall hereafter be held at the house of said Carter.

Approved March 20, 1851.

CHAPTER 483.

AN ACT better to define the duties of the Keeper of the Penitentiary.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky,* That the keeper of the penitentiary is hereby authorized and directed to furnish to the convicts in said penitentiary, at the expense of that institution, a sufficient amount of clothing of such materials as has heretofore been given to them, so that they shall each have, at all times, in the winter, two pairs of pantaloons, two shirts, one vest, two roundabout coats, one wool hat or cap, one pair of shoes, and two pairs of socks; and in the summer, two pairs of pantaloons, two shirts, one hat, one pair of shoes, and one roundabout coat; and said keeper is hereby directed to have a part of said clothes washed every week, and to require said convicts to put on at least a clean shirt, pantaloons, and socks, every Sunday morning.

Keeper to furnish convicts certain clothing.

Bed clothing to be washed.

§ 2. That said keeper be and he is hereby directed to have the cells and bed clothing of said convicts well washed once every month, and oftener, if he should be so directed by the board of visitors, who have been or may hereafter be appointed by law; and also, to furnish five additional stoves, and place the same around the building

Cells to be washed and additional stoves set up.

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Duty of board
of Visitors.

containing the cells, that they may be dried and made more comfortable in winter.

§ 3. That it shall be the duty of the board of visitors aforesaid, to see that this act is carried into effect, and report the same to the next general assembly.

Approved March 20, 1851.

CHAPTER 484.

AN ACT concerning Justices' and Constables' Districts in Fleming county.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the report of the commissioners, appointed to divide Fleming county into justices' and constables' districts, made the eleventh day of March, 1851, is confirmed; and the boundaries of said districts shall be as is therein set forth, except that all that portion of the Sherburn district, on the east and south east side of Locust creek, is hereby attached to the Hillsboro' district, and the said Locust creek shall be the boundary between said two districts, so far as they adjoin; the said several districts in said county, shall be the election precincts for all elections required to be held by the constitution and by law in said county.

Approved March 20, 1851.

CHAPTER 486.

AN ACT regulating allowances to Masters, Auditors, and Commissioners in Chancery.

Allowance to
masters in chan-
cery, auditors &
commissioners.

To make oath
of time engaged.

Allowance to
surveyor.

Allowance for
making deed.

How allowan-
ces may be in-
creased.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky,* That no master commissioner in chancery, or auditor, or commissioner, appointed by any circuit court for the settlement of accounts, partition of land, negroes, or personal estate, allotment of dower in land or slaves, or the assessment of the value of any property whatever, or the profits thereof, shall be allowed a compensation exceeding the rate of three dollars per day, for the time such master, auditor, or commissioner may be necessarily engaged in the transaction of the business to be committed to them by said court; the time of such service to be ascertained by the oath of such master, auditor, commissioner, and other competent evidence: *Provided,* that if a survey should be required in course of such business, then such allowance shall be made to the surveyor as the court shall deem proper; and that the court may allow a sum not exceeding one dollar and fifty cents to a commissioner for executing a deed pursuant to any decree or order of court, and that the court may increase such allowance, with the assent of all the parties interested in the matters referred to the mas-

ter, auditor, or commissioner, by an order made, either prior or subsequent to the transaction of said business.

§ 2. That the provisions of this act shall not apply to the Louisville chancery court.

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Not to apply to Louisville chancery court.

Approved March 20, 1851.

CHAPTER 490.

AN ACT to suppress the practice of adulterating spiritous liquors, &c.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That hereafter, all dealers in liquors or wines, either foreign or domestic, shall not be permitted, under the specious pretext of rectifying, to adulterate the same, by adding thereto coculus indicus, juniper berries, tobacco, soap, vitriol, logwood, or any other drug or chemical preparation.

Liquors not to be rectified or adulterated.

§ 2. That it shall be the duty of the inspectors of liquors in the city of Louisville, and in all other towns and cities where inspectors have or may be appointed in this commonwealth, if they suspect that whiskey, brandy, gin, or wine, which they may be called on to inspect, contains anything impure, or other than the extract of the grain or fruit from which it is made, to cause the same to be analyzed by some skillful chemist, and if found to contain any such impurities or drugs, then said inspector shall mark upon the head of the barrel or other vessel containing the same, in plain letters, the word "condemned."

Duties of inspectors liquors

May cause liquors to be analyzed.

§ 3. That if any person or persons in this commonwealth shall knowingly buy or sell any rectified whiskey, brandy, gin, or wine, containing any adulteration as contemplated by this act, such person or persons shall forfeit and pay a fine to the commonwealth of not more than five hundred dollars, nor less than twenty cents per gallon, for all such impure liquor or wine so bought or sold, to be recovered by action of debt before any court or justice of the peace having competent jurisdiction, or on presentment of a grand jury, to be collected and paid as other fines and forfeitures, in aid of the jury fund.

Penalty for dealing in adulterated or rectified liquors.

How recoverable.

§ 4. That in all prosecutions against wholesale dealers for a violation of this act, the fact of rectifying shall be considered *prima facie* evidence of adulteration, and the defendant's knowledge thereof.

Rectifying *prima facie* evidence of adulteration.

§ 5. That all costs and charges of inspection and analyzing spirits shall be paid by the owner of such spirits: *Provided*, that this act shall not take effect until the first day of June, 1851.

Owner to pay cost of analyzing.

Approved March 20, 1851.

1851.

CHAPTER 493.

AN ACT to authorize the several Circuit Courts to change the venue in penal and criminal prosecutions.

Circuit courts to grant change of venue in penal or criminal cases.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That hereafter, when any indictment shall be depending in any of the circuit or criminal courts of this commonwealth, against any person or persons, charging him, her, or them, with any penal or criminal offense, the judge of said court shall have power and authority, upon the application of the defendant or defendants, to change the venue from the county where the indictment is found to some other county, where the defendant or defendants can obtain a fair and impartial trial.

Manner of proceeding where the objection is to the judge.

§ 2. That if the said defendant or defendant shall swear to, and file an affidavit in the court where any such prosecution shall be depending, alledging therein, in substance, that he, she, or they, verily believe that, upon the trial of said prosecution, justice will not be extended to him, her, or them, in said court, in consequence of the prejudice that the judge of said court has against said defendant or defendants, or their case, it shall be the duty of said judge to change the venue or trial of said prosecution to the nearest county of the adjoining circuit.

Where the objection is to the citizens, prosecutor, &c.

§ 3. That if any defendant or defendants to any of said indictments shall swear to, and file a petition in the court where the prosecution is depending, setting forth, in substance, that he, she, or they, verily believe that justice will not be administered impartially to him, her, or them, in said court where the indictment is found, from the prejudice of the citizens against said defendant, or from the undue influence that the prosecutor, or those managing the same, has in said county; or in consequence of the prejudice of the sheriff or clerk of said court; or in consequence of any other good and substantial cause shown, the judge of said court may, in his discretion, change the venue of said prosecution to some other convenient county within his circuit, where said cause or causes do not exist: *Provided, however*, that the said judge, before he grants a change of venue, as provided for in the first, second and third sections of this act, shall, if demanded by any one opposed thereto, require proof in open court, that good cause exists for the change of venue for the reasons set forth in said sections; and the commonwealth's attorney, and, in his absence from the county, the county attorney shall have the right, by proof in open court, to show that no such cause exists; and if said judge, upon the proof, shall be of opinion that the cause for the change of venue does not exist, he shall refuse it; but if he be of opinion it does exist, he shall grant the change: *Provided further*, that in all cases, due notice of any application for a change of venue, under the provisions of this act, shall be given, by the party applying therefor, to the

commonwealth's attorney, and, in his absence from the county, to the county attorney.

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§ 4. That the judge who may order a change of venue of any prosecution, as provided in this act, to any other county or circuit, shall have power to direct the safe removal of the defendant or defendants to the jail of the county where said change of venue is ordered, in case he, she, or they, shall then be in actual custody of the jailer of the county where the indictment is found, to be sent in custody of the sheriff or jailer of said county, with sufficient guard, as said court shall direct: and if said offense is bailable, and the party shall give bail, said court is authorized to take the recognizance of said defendant or defendants, with one or more good sureties, in such penalty as the court may fix, with condition that said defendant or defendants shall well and truly appear on such day of the succeeding term of the court where said prosecution shall be removed, as said court shall designate and fix, and shall surrender himself, herself, or themselves, into the custody of said court, and not depart until said court shall permit and direct.

Judge to order defendant to be removed in custody, &c. unless admitted to bail.

§ 5. That said court shall have power and authority to take the recognizance of any or all witnesses on behalf of the commonwealth and the accused, to appear at said court where said prosecution shall be removed, to give their testimony; and also, to make all other orders that may be considered necessary to insure a fair, full, and speedy trial of said prosecution upon its merits.

Recognizances of witnesses to appear may be taken.

§ 6. That when a criminal or penal prosecution shall be removed, as before directed, the clerk of the court shall forthwith transmit the original papers in said prosecution, together with a transcript of the record of the proceedings had in said court, to the court where said case shall have been removed, by himself, deputy, or some other discreet person; and said clerk shall be answerable for the fidelity of the person whom he may employ to convey said papers from his office to the office of the clerk of the court to which they shall be sent; and the expense attending the removal shall be paid by the person praying the same; and the clerk who shall convey, or cause to be conveyed, said papers to the court to which they shall be sent, shall and may receive five cents for each mile he must necessarily travel in going to, and returning from said clerk's office; which shall be paid into the hands of the clerk of the court where said prosecution originated, before the papers shall be transmitted by him.

Clerk to transmit papers, &c.

§ 7. That the court to whom said prosecution shall be sent shall have ample and complete jurisdiction of the same, as though the crime or offense had been perpetrated in said county, and the prosecution had commenced in said court; and to direct the impanneling a grand jury to find a

Jurisdiction granted to try cases removed.

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How a slave
may be entitled
to provisions of
this act.

new indictment, in case the original one should be found imperfect, or a *nolle prosequi* entered on behalf of the commonwealth.

§ 8. That whenever any slave shall stand charged before any circuit or criminal court of this commonwealth with any crime that amounts to felony, he or she shall be entitled to all the benefits of this act: *Provided*, that his or her owner or legal representative or agent shall make oath according to the provisions of this act, and in the absence of any one authorized to make the necessary oath, or where the owner, representative, or agent shall be, in any way whatever, engaged in the prosecution, the change of venue shall be left to the sound discretion of the judge; and when he shall have ordered a change of venue, it shall be the duty of the clerk forthwith to issue a summons against the reputed owner, his or her representative, to appear before said court on such day as shall be designated by the court, to show cause why he, she or they should not pay the expenses of said change of venue; and on such summons being returned executed, the court may proceed to determine whether he, she or they are the owner or owners of said slave; and if he shall decide in the affirmative, he may order execution, and do all other legal acts necessary to coerce the payment of the expenses incurred by reason of the change of venue: *Provided*, that whenever the payment of the expenses have to be coerced, payment of the mileage herein allowed to the clerk shall not be required before the papers shall be transmitted by him to the office of the court to which the change of venue is made: *Provided further*, that the master or owner of such slave shall not be responsible for the costs herein provided for unless the venue shall have been changed upon the application of such master or owner.

But one change
to be granted.

§ 9. That not more than one change of venue shall be granted under the provisions of this act in any one case.

Approved March 20, 1851.

CHAPTER 497.

AN ACT concerning the tax on licenses to Coffee-houses, Taverns, and Ten Pin Alleys, in the city of Louisville and county of Jefferson.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That hereafter, the tax on all licenses granted to coffee houses, taverns, and ten-pin alleys, in the city of Louisville and county of Jefferson, shall be paid to the trustee of the jury fund for Jefferson county, instead of the county court clerk; and the said trustee shall account for, and pay the same into the treasury of this commonwealth, as now directed by law, and be governed in the premises

by the laws now in force which regulate the duties of the county court clerk in relation to licenses granted as aforesaid.

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Approved March 20, 1851.

CHAPTER 506.

AN ACT for the payment of the debts now due, and for the further prosecution of the work on the Second Kentucky Lunatic Asylum, and to appoint Commissioners to visit the same.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That, in addition to the appropriations heretofore made for the erection of the Second Kentucky Lunatic Asylum, there is hereby appropriated the sum of thirty thousand dollars, to be paid out of any money in the treasury not otherwise appropriated; and the second auditor is directed to issue his warrant on the treasurer for the same, on the application of the commissioners appointed under the provisions of the second and eighth sections of an act, approved the 28th day of February, 1848, concerning said asylum. The debts now due to contractors and others, to be paid out of the same first; the residue to be applied to the payment of the other existing liabilities of the state, so soon as the contracts for said existing liabilities are complied with; and if there be any of the said sum remaining, the balance to be applied to the completion of one or more rooms in said asylum: *Provided*, if a vacancy occurs in the commissioners appointed as aforesaid, the governor of this state shall fill the vacancy by appointment; and such person or persons thus appointed, shall execute bond as required of the former commissioners, and proceed to discharge the duties of the said commissioners required by this act.

§ 2. That all laws vesting power and authority in said commissioners to contract any debt or liability on the part of the state, beyond the sum specified in this act, be and the same is hereby repealed.

§ 3. That Dr. James B. Bowling, of Logan county, D. S. Howell, of Bardstown, and John G. Handy, of Mercer county, be and they are hereby appointed commissioners to visit the Second Kentucky Lunatic Asylum, to inspect the same, and everything pertaining thereto; to ascertain what it will cost to prepare the same for the accommodation of fifty inmates; what one hundred; what two hundred, and what to complete the building; to state and settle the accounts of the present commissioners; to make out a particular description of the building and all of its appurtenances, and to make out a report accompanied with all other information material to be known, and present the same to the next legislature of Kentucky. If any one or

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more of said commissioners fail or refuse to act, the governor of this state shall fill the vacancy so created.

§ 4. That the further sum of five thousand dollars be appropriated for the purpose of progressing with said building for the year 1851, to be paid quarterly out of any money in the treasury not otherwise appropriated; and that the commissioners for the erection of said building shall expend said sum in finishing off in a neat, plain, and substantial manner, as many rooms in said building as said five thousand dollars will complete, preferring such rooms as will prepare for the reception of the greatest number of inmates, and upon no other part of said building; and they are restricted to the said sum of five thousand dollars in the letting out the work, and contracting with workmen and laborers; and in case the expenditure of said amount be transcended in such contracts, the state will in no wise be responsible for the same; and the second auditor is directed to issue his warrant on the treasurer for the same, on the application of the commissioners appointed under the provisions of the second section of an act, approved the 28th day of February, 1848, concerning said asylum.

Approved March 20, 1851.

CHAPTER 510.

AN ACT allowing to the county of Warren an additional district for the election of Justices of the Peace and Constable.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That Elijah Upton, J. D. Alexander, and Leonard Totly, are hereby appointed commissioners to re-district that part of Warren county lying north of Big Barren river, and, in so doing, they shall divide the same into three districts for the election of justices of the peace and constables instead of two, as reported by the former commissioners.

Approved March 20, 1851.

CHAPTER 513.

AN ACT fixing the period of Clerks and other officers listing their fee bills for collection in the present year.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the clerks of the several courts, and other officers, required to list for collection their fee bills in the month of April in each year, be allowed until the first day of July in the present year to list said fee bills for collection; and when so listed with the proper officer, he shall be bound to collect or account for them, within the time prescribed by law: *Provided*, that the provisions of this act shall not apply to any subsequent year.

Approved March 20, 1851.

CHAPTER 515.

1851.

AN ACT changing an election precinct in Jefferson county.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the place of voting be and it is hereby changed from the Oakland House to the tavern of John Spardin, in the same precinct, in Jefferson county.

Approved March 21, 1851.

CHAPTER 523.

AN ACT to amend an act in relation to running and re-marking a part of the county line between Graves and Hickman counties.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the commissioners appointed by an act of the last session of the general assembly, to run and re-mark a part of the line between Graves and Hickman counties, shall meet at the place indicated in said act on the first Monday in September, or as soon thereafter as practicable, together with the surveyors of Graves and Hickman counties, and proceed to perform the duties required by said act, in such manner as the nature of the case requires: *Provided,* that each county shall pay its due proportion of the expense for the said services.

Approved March 21, 1851.

CHAPTER 524.

AN ACT to equalize the compensation for the collection of the Revenue Tax.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky,* That hereafter, the revenue tax for the preceding year shall be due and payable into the treasury of this commonwealth on the first Monday in January in each and every year; and any sheriff failing or refusing to pay the same into the treasury, on or before that day, shall be chargeable with, and required to pay the legal interest on the same, from the time it is due until paid; and it shall be the duty of the auditor, when settling with any sheriff who has failed to pay his revenue when due, to charge and collect from such sheriff the legal interest on the same from the time it was due until paid: *Provided,* any sheriff shall be authorized to deposit his revenue in any bank or branch bank now established in this commonwealth; said deposit to be made to the credit of the branch bank in Frankfort, for the benefit of the treasury of this commonwealth, on account of revenue collected by _____, sheriff for the county of _____, for the year _____; and any sum so deposited shall be held and regarded as a payment into the treasury, unless the governor for the time being should, by his proclamation, order and direct otherwise.

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§ 2. That the sheriffs of the several counties of this commonwealth shall receive, for collecting the revenue, the following commissions, to-wit: on every dollar collected, until the revenue reaches one thousand dollars, eight cents; on every dollar after the first one thousand dollars, and until the revenue reaches two thousand dollars, six cents; on every dollar after two thousand dollars, and until the revenue reaches three thousand dollars, five cents; on every dollar after three thousand dollars, and until the revenue reaches four thousand dollars, four cents; and on every dollar above four thousand dollars, three cents.

Approved March 21, 1851.

CHAPTER 526.

AN ACT defining the boundaries of the Magistrates' and Constables' districts in Pulaski county.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That the county of Pulaski be and the same is hereby divided into nine districts, for the election of justices of the peace and constables, and bounded as follows, viz:

District No. 1, or town district: to begin on Fishing creek, at the mouth of Clifty creek; thence down Fishing creek to the mouth of said creek; thence up Cumberland river to the mouth of Pitman's creek; thence up Pitman's creek to the Shallow ford; thence a straight line to Squire Denbain's, including him; thence down the valley to Cumberland river; thence up said river to where Haynes' knob strikes said river; thence with Haynes' knob and the dividing ridge, which divides the waters of Buck creek and Pitman's creek, to the Rock Lick meeting house, near Patrick Gillispie's; thence a straight line so as to include the said Gillispie, to the Mount Vernon road, at Christopher Haile's; thence with the Mount Vernon road to the road leading in the direction of John Vaught's, near John W. Anderson's; thence with said road to John Vaught's, not to include him; thence to John Mercer's, not to include him; thence a direct line to the Crab Orchard road, to Pitman's creek; thence up Pitman's creek to the mouth of Cox's branch; thence up said branch to its source; thence in a direct line to the Stanford road; thence with said road to the fork of the Stanford, Casey, and Salt Works road; thence with the Salt Works road to the Aldridge place, not to include it; thence down the Aldridge branch to Clifty creek; thence down Clifty creek to the beginning. The place of holding elections for the officers aforesaid, in district No. 1, shall be at the court house, in the town of Somerset.

§ 2. District No. 2: to begin at Fishing creek, where the Columbia road crosses the same in district No. 1; thence

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with the Columbia road to the Jamestown road; thence with said road to the Russell county line; thence with said line to the Wayne county line and Cumberland river, to the mouth of Fishing Creek; thence up Fishing creek to the beginning. The place of holding elections for the officers aforesaid, in district No. 2, shall be at the house of George W. Gaines.

§ 3. District No. 3: to begin at Fishing creek, at the beginning of district No. 2; thence with the line of district No. 2, to the Russell county line; then with said line to the Casey county line; thence with said line near to Miltonsville; thence with the road running down the ridge in the direction of Joel W. Cooper's, to Fishing creek, at said Cooper's; thence down the creek to the beginning. The place for holding elections for the officers aforesaid, shall be at Harrison, in district No. 3.

§ 4. District No. 4: to begin on the Casey county line, on the line of district No. 3, near Miltonsville; thence with the Casey county line to the Lincoln county line; thence with said line to Buck creek; thence down said creek to the old Lee ford; thence with the road from said ford to Nathan Floyd's, to include him; thence with the road to Adam Surber's, not to include him; thence with the road to Harvey Hubble's, to include him; thence down his spring branch to Pitman's creek; thence down said creek to the mouth of Cox's branch, on district No. 1; thence with district No. 1 to the mouth of Clifty creek, on district No. 3, to the beginning. The place for holding elections, in district No. 4, for the officers aforesaid, shall be at the town of Mount Gilead.

§ 5. District No. 5: to begin at the Lee ford, on Buck creek, on district No. 4; thence with the line of district No. 4 to the line of district No. 1, at the mouth of Cox's branch, on Pitman's creek; thence with the line of district No. 1 to the Mount Vernon road at Christopher Haile's; thence with the Mount Vernon road to Noah Lee's, to include him; thence with Flat Lick creek to the Salt Works road; thence with the Salt Works road to Buck creek; thence with said creek to the beginning. The place for holding elections for the officers aforesaid, in district No. 5, shall be at the house of William Price.

§ 6. District No. 6: to begin at the ford of Buck creek, on district No. 5, near Jonathan Smith's; thence up Buck creek to the Lincoln county line; thence with said line to the Rockcastle county line; thence with said line to the Laurel county line; thence with said line to the mouth of Line creek; thence up said creek to where the Stanford road crosses said creek; thence with said road to where it crosses Buck creek; thence up said creek to the beginning. The place of voting for the election of the officers afore-

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said, in district No. 6, shall be at Harry Debard's, a former place of holding elections.

§ 7. District No. 7: to begin on the Mount Vernon road at Christopher Haile's, on district Nos. 1 and 5; thence with the line of No 5 to Buck creek; thence with the line of district No. 6 to the Laurel county line; thence with said line to the Whitley county line; thence with said line to where it strikes Cumberland river; thence down Cumberland river to the line of district No. 1, at the foot of Haynes' knob; thence with the line of district No. 1 to the beginning. The place of holding elections for the officers aforesaid, in district No. 7, shall be at the house of William Hargis.

§ 8. District No. 8: to begin at the mouth of Little Indian creek, on the Wayne county line; thence with said line to the Cumberland river; thence up said river to the mouth of Pitman's creek; thence up said creek to the Shallow ford; thence on a straight line to Squire Denbain's; thence down the valley to Cumberland river; thence up said river to the mouth of Cave creek; thence up said creek to the head of the same; thence with the dividing ridge between Laurel fork and Martin's creek, to Little Indian creek; thence down said creek to the beginning. The place of voting in district No. 8, shall be at Point Isabel, at the mouth of the Big South Fork.

§ 9. District No. 9: to begin at the mouth of Little Indian creek, on the Wayne county line; thence up said creek to the dividing ridge between Laurel fork and Martin's creek; thence with said dividing ridge to the head of Casey creek; thence down said creek to the mouth thereof; thence up the Cumberland river to the Whitley county line; thence with said line to the Wayne county line; thence with said line to the beginning. The place of voting for the officers aforesaid, in district No. 9, shall be at Norton Strunk's: *Provided*, that nothing in this act shall be so construed as to repeal an act, approved February 10, 1851, establishing the tenth district in Pulaski county.

Approved March 21, 1851.

CHAPTER 527.

AN ACT for the benefit of John G. Holloway.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the boundaries of district No. 5, for the election of justices of the peace and constables, in the county of Henderson, be and the same are hereby so changed, as to include the farm of John G. Holloway, in district No. 5.

Approved March 21, 1851.

CHAPTER 533.

1851.

AN ACT providing for the collection, by the Sheriffs elected in May next, of the revenue of the present year.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the clerks of the county courts are hereby required to deliver to the sheriffs, elected in May next, the commissioners' books of the revenue for their respective counties for the present year; which revenue tax said sheriff shall collect and account for agreeably to law: *Provided*, that said clerks shall not deliver said books to said sheriffs until they shall qualify, by taking the oaths and executing the bond for the collection of the revenue as required by law; and any law requiring the county court clerks to deliver said commissioners' books to the sheriff on the first day of June, in each year, is repealed as to the action of said clerks in that regard during the present year; but not as to subsequent years, when the said county court clerks shall deliver said commissioners' books to the sheriffs on the first day of June, in each year, as heretofore.

Approved March 21, 1851.

CHAPTER 538.

AN ACT concerning certain Magistrates' and Constables' Districts in Lewis county.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That the place of voting in district No. 5, in Lewis county, be changed from the house of Stephen Nowland's to that of Josiah W. Stagg's, in said district.

Voting place
in No. 5 changed

§ 2. That the boundary of district No. 6, in said county, as established by the commissioners heretofore appointed to lay off said county into magistrates' and constables' districts, be changed as follows: beginning at the house of William Secrest, so as to include him; thence down Henderson's branch to intersect the east fork of Cabin creek, and down the same so as to include the dwelling house of William Boyd; thence to George Rea's house on the creek, so as to include him; thence across with the road, to Ebenezer meeting house; thence on a straight line to main Cabin creek; thence up the creek, including the dwelling houses of the Rowland's to James Fitch's, including him; thence with a road running east, across the state road, until it strikes the east fork; thence in a straight line across the mountain, to Thomas Crawford's, on Salt Lick creek, including him; thence with the former boundary so as to intersect at the beginning.

Boundaries of
No. 6 changed.

§ 3. That the qualified voters in district No. 7, in said county, may, at the election to be held in May next, locate the place of voting thereof by a majority of all the votes cast in said district; and it shall be the duty of the sheriff

Election to be
held in No. 7 to
determine vo-
ting place.

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to open a poll for Tollsburg and another for the house of John B. Finley, as said voting place; and the place having the largest number of said votes, shall be established as the place of voting; and it shall be the duty of the sheriff to return a certificate of the same to the county court of Lewis county, and said court shall, thereupon, make an order establishing the place for which the greatest number of votes were cast, as the voting place in said district; and the clerk of said court shall certify the same to the secretary of state by returning a copy of said order.

Approved March 22, 1851.

CHAPTER 539.

AN ACT making Lafayette, in Christian county, a place of voting.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That in the fifth district for the election of justices of the peace and constables, as now formed in Christian county, the town of Lafayette shall be the place of voting.

Approved March 22, 1851.

CHAPTER 542.

AN ACT to alter certain districts in Barren county.

Boundaries
changed.

2d district.

3d district

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the boundaries of the second and third districts, for the election of justices of the peace and constables for Barren county, as reported by the commissioners, be and the same are so changed as to read as follows: *Second District*—beginning at the ford on Skegg's creek, near Charles Ray's; thence along the old Gallatin road to Gillock's store; thence along the old Pikesville road to the Monroe county line, near Barton's old place; thence with the county to Barren river; thence down the river to the mouth of Peter's creek; thence up the creek to the upper end of J. Britt's farm; thence around the upper end of said farm, by said Britt's bars, with the road to Joseph Renfroe's gate; thence with the Ralston mill road to where it intersects the old state road; thence with said road to Skegg's creek at Hardin Ralston's. We designate the house of William Bridges, (Tracy,) as the place of holding elections in this district. *Third District*—beginning at the mouth of Mrs. E. Mathews' spring branch, on Skegg's creek; thence up the creek to the old state ford at Hardin Ralston's; thence down the old state road to where it intersects the mill road leading from Joseph Renfroe's; thence with said road to Renfroe's gate; thence with the road to and by J. Britt's bars, to Peter's creek; thence

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down the creek to Barren river; thence down the river to where the Warren county line leaves the river; thence with the Warren and Edmonson county lines to the old Dripping Spring road, near M. Mitchell's old place; thence with said road to the Stovall road; thence down the Stovall road to John Allen's; thence up the Denton road to the bridge; thence down Beaver creek to Mathews' mill; thence with the Mathews' mill road to Settle's mill road; thence along the same to J. S. Drane's gate; thence with the Drane road to Mrs. E. Matthews' spring, leaving her out; thence down her spring branch to the beginning. We designate "Rocky Hill" as the place of voting in this district.

Approved March 22, 1851.

CHAPTER 543.

AN ACT concerning Justices' and Constables' Districts in Monroe county.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That the justices' district, numbered 6, in Monroe county, be so changed and extended as to include the following portion of justices' district, numbered 1, in said county, to-wit: beginning at the point, on the Tennessee state line, where the old Glasgow and Carthage road crosses the same, and running with said road to its intersection with Barren river; thence with said river up the same, to where said road intersects the same, at the ford, at John Meadows'; and thence with said road to where it intersects the east fork of Big Barren river, at the ford, below the old William Howard plantation; and said district No. 1, is changed accordingly.

Boundaries of
districts Nos. 6
& 1 changed.

§ 2. That the residence of Jesse Fitzgerald, sen., shall be a part of the said district No. 6, and the lines of said district and the lines of district No. 3, are hereby changed accordingly; and the lines of district No. 6 are hereby extended so as to include the residences of Thomas Pitcock, John Lyon, William Brown, sen., and that of John Pitcock, situated on the public road which leads from Tompkinsville to Wilson's ferry, on the Cumberland river; and the line of district No. 6, shall run from said Pitcock's dwelling house, with said public road, to said ferry, on said river; thence down the river to the mouth of Sulphur Lick creek; thence up said creek to the fork thereof, below Rawdon Thompson; and the lines of districts Nos. 4 and 5, are changed accordingly.

Boundaries of
districts Nos. 6
and 3 changed.

Lines of Nos. 4
and 5 changed.

§ 3. And whereas, the commissioners who laid off and divided said county into justices' districts, under an act of this legislature, have fixed and designated the Skegg's creek meeting house as the place of holding elections and voting in justices' district No. 3, and it is represented that the church, to whom said house belongs, is unwilling that said house shall be used for such purpose, and a large num-

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Voting place in
No. 3 changed.

ber of citizens of said district have petitioned this legislature to remove, from said house, the holding of said elections, and fix the place of voting in said district at the large school house, in common school district in said county, No. 23, situated about one half mile from the residence of William Bartley. Therefore, *be it further enacted*, that the change is made from said meeting house to said large school house; and said large school house shall be the place of voting in said district, in lieu of said meeting house.

Approved March 22, 1851.

CHAPTER 544

AN ACT to change a voting place and certain Magistrates' and Constables' districts in Ohio county.

Lines between
districts Nos. 7,
4 and 5 changed.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That the line, between district No. 7, and districts Nos. 4 and 5, in Ohio county, as established by the commissioners to divide said county into districts for the election of justices of the peace and constables, be and the same is so changed as to begin at the mouth of No creek, and to run up said creek to little No creek; thence up little No creek to the head thereof; thence with the dividing ridge between the waters of No creek and Barnett's creek to the new cut road, leading from Hartford to Hawesville; thence with said road to the branch which runs by Jonathan Hoover's house; thence with said branch to Rough creek; and all the territory between said line and Rough creek is hereby made a part of district No. 7.

Voting place in
district No. 1
changed.

§ 2. That the place of voting in district No. 1, in said county, is hereby changed from the house of Job S. Arnold to the house of William Daniels.

Approved March 22, 1851.

CHAPTER 547.

AN ACT to extend the limits of Magistrates' and Constable's district No. 7, in Knox county.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the boundaries of the magistrates' and constable's district, No. 7, in Knox county, be so extended as to cross Cumberland river at the mouth of Flat creek; thence to the Whitley county line, so as to include the possessions of Solomon and Hezekiah Terrill; thence with the Whitley county line down the river, crossing it at Joseph Evans'.

Approved March 22, 1851.

CHAPTER 550.

1851.

AN ACT to appoint Commissioners to change the boundaries of certain Magistrates' and Constables' districts in Owen county.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That it shall be lawful for Joel Hern-
don, John Q. Baker and Thomas White, who are hereby
appointed commissioners for that purpose, to make such
alterations in the sixth, seventh, and eighth magistrates'
and constables' districts in the county of Owen, as report-
ed to the secretary of state by the commissioners hereto-
fore appointed to lay off the said county into districts, as
shall be best for the interest and convenience of the voters
therein, having due regard to the territory and voters there-
in contained.

Commissioners
appointed to
change 6th, 7th,
& 8th districts
in Owen county

§ 2. That the said commissioners shall report the chang-
es made in the boundaries of the said districts to the sec-
retary of state, on or before the 20th day of April next;
and that they shall notify the voters of the said county of
Owen of such changes as shall be made, by advertisements
thereof, at three of the most public places therein, for at
least ten days previous to the election of magistrates and
constables in the county.

To report such
changes to sec-
retary of state
by 20th April &
notify voters by
advertisement.

§ 3. That the secretary of state shall transmit a copy of
this act to the sheriff of Owen county immediately after its
passage—and the signature of the governor thereto—who
shall deliver the same to any one of the aforesaid commis-
sioners, and who shall notify all of said commissioners of
the passage hereof.

Duty of secre-
tary of state.

Approved March 22, 1851.

CHAPTER 551.

AN ACT to amend the Justices' district of Lewisburg, in the county of
Mason.

*Be it enacted by the General Assembly of the Commonwealth
of Kentucky*, That the boundary of the Lewisburg district,
in the county of Mason, be changed as follows: beginning,
leaving Mill creek at the mouth of the branch which runs
through Richard Wells' old farm, where William Smither
now lives; and from that point, run a straight line to
where the Elizaville Turnpike road intersects the Helena
Turnpike; thence with the Elizaville Turnpike road to the
Fleming county line; and the territory embraced by this
line is added to the Lewisburg district; and, also, the fur-
ther boundary, beginning at the turnpike where the road to
Washington leaves it, and running with the Washington
road to the Nichols' mill road; thence with the Nichols'
mill road to the road that leads down Wells' creek; thence
down the creek to the farm of John Lamb, and with Lamb's
line to the farm of Thomas Berry, and with Thomas Ber-

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ry's line to the North fork, (leaving Lamb and Berry in the Washington district;) and thence with the North fork to the mouth of Mill creek; and all the territory contained in this boundary is added to the Lewisburg district.

Approved March 22, 1851.

CHAPTER 552.

AN ACT concerning Magistrates' and Constables' districts.

Districts formed by the Commissioners appointed heretofore, except otherwise provided for, are established as voting districts, with the voting places therein named.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky,* That the districts formed by the commissioners appointed under and by an act, entitled, an act appointing commissioners to divide the counties of this state into districts for the election of justices of the peace and constables, approved December 12, 1850, are hereby established as districts in the several counties in this state for the election of two justices of the peace and a constable, with the boundaries described in the report of said commissioners, as filed and recorded in the office of the county court clerk of the counties respectively, and as filed in the office of the secretary of state; and the places named by said reports, as voting places in said districts respectively, are hereby established as the places for holding all elections in said districts for all officers, unless otherwise provided for by law.

Said districts and voting places to be subject to such changes as have been made by law.

§ 2. The said districts and voting places named in the first section of this act, are established, subject to such changes, alterations, and modifications as have been made, or shall be made by laws or in pursuance of laws passed at the present session of the general assembly, and all such changes, alterations, and modifications, are as fully established as if they had been embraced in and formed part of the report of said commissioners, named in the first section of this act.

Secretary of state to transmit copies of all acts changing districts & voting places to the clerk of the respective county courts.

§ 3. That it shall be the duty of the secretary of state to make out and transmit certified copies of every act passed at the present session of the general assembly, changing or forming new districts, or changing the place of voting in districts, in any county, to the clerk of the county wherein such change shall have been made, on or before the 10th day of April next; and said act shall be recorded by said clerk on his record books, in which the reports of said commissioners are recorded, and a true copy of said act or acts shall be by said clerk delivered to the sheriff of his county.

Approved March 22, 1851.

CHAPTER 553.

1851.

AN ACT to establish a July term of the Wayne County Court.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That there shall be a term of the Wayne county court held on the fourth Monday in July in every year, for the transaction of business.

Approved March 22, 1851.

CHAPTER 562.

AN ACT providing for the special terms of the County Courts.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That it shall be the duty of the county courts, from time to time, to hold special terms thereof for the purpose of qualifying sheriffs and other officers to enter upon the duties of their respective offices, by taking the oaths required by law and executing such official bonds as, by law, they are directed to execute.

Approved March 22, 1851.

CHAPTER 564.

AN ACT to change the places of voting in Districts No. 3, in Simpson; No. 5, in Woodford; No. 8, in Breckinridge; and No. 6, in Henderson.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky,* That the place of voting in district No. 3, in Simpson county, is so changed as to make Ira M. Breedlove's school house the place of voting in said district.

No. 3 in Simpson.

§ 2. That the voting place in district No. 5, in Woodford county, is hereby changed from the house of Senate A. Hawkins to the house of Elijah Wilson, in said district.

No. 5 in Woodford.

§ 3. That the voting place in district No. 8, in Breckinridge county, is hereby changed from the house of Henry D. Basham, to the town of Union Star, at such house therein as the sheriff may select.

No. 8 in Breckinridge.

§ 4. That the voting place in district No. 6, in Henderson county, is hereby changed from the house of E. D. Bennett, to the town of Hibbardsville, in said district, at such house within said town as the sheriff may select.

No. 6 in Henderson.

Approved March 22, 1851.

CHAPTER 565.

AN ACT to change the lines between districts Nos. 2 and 3, in Mercer county.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the line between districts No. 2 and No. 3, in Mercer county, is so changed as to begin at the point where Vandyke's road crosses A. M. Vanarsdall's south

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line ; thence running west with said line until it strikes Simon Vanarsdall's southern line ; thence with said line until it strikes Simm's mill road ; thence with said road to the dividing ridge between Thompson's creek and Salt river ; thence with said ridge to the Providence road, near Samuel Wright's.

Approved March 22, 1851.

CHAPTER 566.

AN ACT to change certain districts in Spencer county.

Line between
districts Nos. 3
and 1 changed.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That the following changes are made in the districts in Spencer county, as formed and reported by the commissioners appointed to lay off said county into districts for the election of justices of the peace and constables, to-wit : the line between districts No. 3 and No. 1, in said county, shall run from Jonathan Cook's, on Elk creek, with the Louisville road until it strikes Big Plumb creek, near the widow Taylor's farm ; thence up said creek to the Bullit county line ; and all the territory north and east of said line shall form a part of district No. 1.

Line between
districts Nos. 2
and 4 changed.

§ 2. That the lines between districts No. 2 and No. 4, in said county, is so changed as to make Heady's run the dividing line between said districts ; and all the territory lying east of said Heady's run shall form a part of district No. 2.

Approved March 22, 1851.

CHAPTER 567.

AN ACT establishing certain voting places in Harrison county.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the following shall be the voting places in the several districts for the election of magistrates and constables in the county of Harrison, hereinafter named, to-wit : in district No. 2, Webb's store ; in No. 4, Claysville ; in No. 7, Jacob Renaker's ; and in No. 8, Leesburg.

Approved March 22, 1851.

CHAPTER 568.

AN ACT to establish an additional Magistrates' and Constable's District in Nelson county, and to extend the boundaries of District No. 6.

Boundaries of
district No. 9 es-
tablished.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That there shall be and there is hereby established an additional magistrates' and constable's district in Nelson county, to be denominated district No. 9, to

be composed of that part of district No. 1, as follows: beginning on the road from Bardstown to Bloomfield, where the line of district No. 1 crosses it; thence with said road to the east end of main street, in Bardstown; thence with said street to third cross street, in said town; thence southwardly with said street, leaving the court house on the east, to the limits of Bardstown; thence with the course of said street continued till it strikes the town fork of Stewart's creek, and down it to the Beech fork and up the same to Knott's fish trap; thence to include St. Thomas'; thence, including William Sutherland's to Horn branch, and down it to the Beech fork, and with it to the mouth of Cedar creek, and up it and its head waters so as to include George Hay's farm, and between it and Electus Hagan's; thence to the point where Doom's bark road commences to ascend the knobs; thence to the east end of the lane between Simmons and Miller; thence to Wathen's mill road, near William Hunter's; thence with Wathen's mill road to John Stewart's, to include John Stewart; thence to include Thomas Aud, on the Louisville turnpike road; thence so as to include Stanilaus Spaulding; thence to include Walter Hopkins'; thence to include John Mackay and A. C. Wilson, to the beginning.

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§ 2. That the bounds of the magistrates' and constable's district, in Nelson county, No. 6, be extended as follows: from the junction of the Beech and Rolling fork, up the Rolling fork to the Burnt Lick ford; thence with the road from said ford, excluding Nicholas Carter's, to the Beech fork at Vititoe's ford, a line of said district as now established; and the bounds of the adjacent district shall be changed accordingly.

Boundaries of
No. 6 changed.

Approved March 22, 1851.

CHAPTER 569.

AN ACT to change the boundaries of, and place of voting in Magistrates' and Constable's District, No. 2, in Scott county, and the voting place of District No. 2, in Grant county.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky,* That the boundaries of district No. 2, in Scott county, as reported by the commissioners appointed to lay off said county into districts for the election of justices of the peace and constables, be and they are hereby changed as follows: commencing at the paper mill of W. H. McDonald & Co., on North Elkhorn; thence down Elkhorn to Threlkeld's mill; thence with the road leading from said mill to Frankfort, to the farm of James Shackelford; thence a line that will leave said Shackelford's farm, and the farms of Thomas Blackburn and Churchill J. Blackburn within the Stamping Ground dis-

Boundaries of
district No. 2 in
Scott changed.

1851.

Voting place
changed.Voting place in
district No. 2 in
Grant changed.

trict, to the Franklin county line ; thence with said line to South Elkhorn ; thence up South Elkhorn to Kenny's farm ; thence with a line north so as to leave the house of said Kenny and William Martin in the Georgetown district, to the Iron Works' road ; thence with said road so that a line running due north will strike the beginning corner. The place of voting in said district to be at the store of John W. Forbes, instead of Harriott's mill.

§ 2. That the place of voting in district No. 2, in Grant county, as laid off by the commissioners heretofore appointed by an act of this general assembly, shall be at the house of William Webb, sr., known as Cordovia post office in said county.

Approved March 22, 1851.

CHAPTER 572.

AN ACT to change the boundary and place of voting in certain Magistrates' and Constables' Districts in Shelby county, and to provide for changing the voting place in District No. 5, in Hopkins county.

District No. 2,
Shelby county.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky,* That the north line of the magistrates' and constable's district, No. 2, in Shelby county, be so changed as to include the farms on which the following individuals now reside, to-wit: Clark and James McDaniel, Stephen Weakley, Gov. C. Foster, Simpson Weakley, David Staples, Anthony Tanner, Nathan Searcee, and Wm. W. Wilson.

District No. 1.

§ 2. That the boundary of district No. 1, in said county, be so changed as to include the farms of H. H. Hancock, and James Ratcliff, and they and their tenants on said farms be allowed to vote in said district.

District No. 7.

§ 3. That the place of voting in district No. 7, in said county, shall be at the house of Josiah Daniel, instead of Rockville.

District No. 5.

§ 4. That the boundaries of district No. 5, in said county, be so changed as to exclude the residences of John G. Bryan and A. B. Veech, and that they be included in the district No. 6, in said county.

District No. 4.

§ 5. That the house of Robert Doak shall be the place of voting in district No. 4, in said county, instead of Chesnut Grove.

Voters in dis-
trict No. 5 Hop-
kins county to
vote upon the
establishment of
the voting place
in said district.

§ 6. That it shall be the duty of the officers conducting the election in May next, at Providence district, No. 5, in Hopkins county, to open columns in their poll book, and take votes to determine at what place in said district the election precinct shall be permanently located ; the town of Providence shall be named, also the house of Mr. Winn, known as the former residence of Cader Bruce, and the house of Eden Craig shall likewise be named, and the vote

taken between them ; and all elections in said district shall thereafter be held at the place having the highest number of votes : *Provided*, that the precinct shall not be removed from Providence unless a majority of all the votes given at said election shall be in favor of one of the other places named.

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Approved March 22, 1851.

CHAPTER 573.

AN ACT changing the boundary of Justices' District, No. 6, in Marion county.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the boundary of district No. 6, for the election of justices of the peace and constables in Marion county, by the commissioners appointed to lay off and divide said county into suitable districts, be so amended as to include all persons living in the following boundary in district No. 4, to-wit: from the mouth of the Meat House branch ; thence down Hardin's creek to William Bean's mill ; thence north to William Bean's house ; thence with the road to John Warren's house ; thence with the road straight to Edward D. Cambron's, near the Washington county line ; and thence north to the Washington county line, and with it round to the line of district No. 1, including in district No. 4, said Bean, Warren, and Cambron, and all others east of said line. And that the secretary of state be directed to forward a copy of said act to the clerk of the Marion county court.

Approved March 22, 1851.

CHAPTER 574.

AN ACT concerning districts for the election of Justices of the Peace and Constables—to authorize the establishment of an additional district, and to change a place of voting in one district in Caldwell county.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That the line dividing the magistrates' and constables' districts between the Princeton and Eddyville districts, as laid off by the commissioners to divide the county of Caldwell into districts for the election of justices of the peace and constables, be so changed as to make a straight line from James Jourdan's, on the Vermont Trace road leading from Princeton to Harman's ferry on the Cumberland river, to the place now occupied by Samuel Garrett, on the turnpike road leading from Princeton to Eddyville, so as to include said Garrett in the Princeton district ; thence from said Garrett's to Freeman's mill, on Eddy creek ; thence up said creek to intersect the line as laid off by the commissioners ; that all that portion of

Line between
Princeton and
Eddyville dis-
tricts changed.

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Voting place
of No. 3 changed

the county of Caldwell lying east of said line, and between said line and the town of Princeton, is added to the Princeton district; and that the place of voting in district No. 3, in said county, is changed from the place designated by the commissioners, and is hereby fixed and established at Spencer Smith's Old House Mill, in said district.

Line between
districts Nos. 1
and 2 changed.

§ 2. That the line dividing the first and second districts in said county, as laid off by the commissioners aforesaid, is so changed as to run a straight line, or a line as nearly straight as practicable, from the house of Littleton Perry to the house of George Jenkins, so as to include Bryant Nichols in the first district.

Caldwell coun-
ty court may ap-
point commis-
sioners to lay off
an additional
district.

§ 3. That the county court of Caldwell county may appoint three commissioners to lay off an additional district in said county, for the election of two justices of the peace and a constable, between the Cumberland and Tennessee rivers, and fix the place of voting therein; and when said commissioners shall have laid off said district, and fixed a place of voting therein, they shall report the same to said court, setting forth an accurate boundary of said district in said report; and if, upon examination of said report, said court shall be of opinion that said district and voting place, as therein established, ought to be established, the court shall make an order establishing the same, and shall order said report to be recorded; and the clerk of said court shall immediately transmit a copy of said report, and the order establishing the same, to the secretary of state, to be by him filed with the report of the commissioners from said county, heretofore filed; and thereafter, elections shall be held in said district at the place designated as the place of voting; in the same manner that elections are or may be required to be held in other districts in said county.

May establish
the name and re-
port to secretary
of state.

Approved March 22, 1851.

CHAPTER 575.

AN AOT to change the Justices' districts in Muhlenburg county, and to establish an election precinct.

Lines of dis-
tricts Nos. 2 &
3 changed.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That the lines of the justices' districts in Muhlenburg county be so changed, in part, as to conform to the following boundaries, viz: the line dividing districts, Nos. 2 and 3, commencing at Helsley's bridge, on Pond creek, running thence with the Williams' ferry road to Andrew Glenn's, sr.; thence on a straight line to the Old Camp Groud; thence to Riley Garrett's place; thence to James Pate's; thence to James B. Mann's; thence to Jesse Barfield's old place; thence to Bethel meeting house; thence with the road leading from South Carrollton to Clarke's ferry, on Pond river, to Theophilus Isbell's; thence with the

original line of district No. 2 to Pond river line, between districts Nos. 4 and 5; beginning at the mouth of Small creek, on Pond creek, at Sefer's ford, running up the said Small creek to John A. Wilkins', including him in district No. 4; thence to T. B. Smith's, including him in district No. 4; thence to Judge Bell's old place, on the road leading from Greenville to Russellville; thence with the original line of district No. 5.

1851.

Line between districts Nos. 4 and 5 changed.

§ 2. The voting places in said districts shall be the same as designated by the commissioners appointed by the legislature to lay off districts for the election of justices and constables.

Voting places in said districts as heretofore.

§ 3. In all general elections, the voters of districts Nos. 3 and 4 shall vote at the court house, in the town of Greenville.

Approved March 22, 1851.

CHAPTER 579.

AN ACT authorizing a change of the voting place in district No. 3, in Trimble county.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the officers of the election, in district No. 3, in Trimble county, shall open a poll at the next May election, for a permanent place of voting in said district; and the place having the highest number of votes at said election, shall be the voting precinct for said district until changed by law; and the place thus chosen as the voting place of said district, shall be established by order of the Trimble county court, and the clerk thereof shall forthwith transmit a copy of such order to the secretary of state, to be filed with the report of the commissioners of said county.

Approved March 22, 1851.

CHAPTER 581.

AN ACT to amend the boundary of district No. 5, in Pendleton county.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the boundary of district No. 5, in the county of Pendleton, for the election of magistrates and a constable, be so amended as to begin at the mouth of Grassy creek, on Licking river, running up said river to Boner's ferry; thence with the Boner's ferry road to where the same strikes the line as laid down by the commissioners heretofore appointed to lay off said county into districts, and with said line to the Grant county line.

Approved March 22, 1851.

CHAPTER 583.

AN ACT providing for running and marking the line between Knox and Harlan counties.

Whereas, it is represented that the line dividing the counties of Knox and Harlan, has never been run and marked,

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and in some places it is uncertain in which county certain individuals reside: Therefore,

Commissioners
appointed to run
said line.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That it shall be the duty of Jefferson Craig, of Knox county, and Jonathan Kelley, of Harlan county, to meet on the 10th day of September next, at the point where the line between the counties of Knox and Harlan intersects the Clay county line, and proceed to run and mark the line between said counties of Knox and Harlan.

Shall conform
to certain acts.

§ 2. That said commissioners, in running and marking said line, shall be governed by the act of assembly establishing the boundaries of said counties, and by the act, entitled, "an act to add a portion of Harlan county to the county of Knox," approved January 27, 1838, and said line shall be run and marked in accordance with the provisions of those acts.

Shall be sworn

§ 3. That it shall be lawful for said commissioners to employ two chain carriers and a marker, to assist them in running and marking said line; and said commissioners, chain carriers, and marker, before entering upon the duties herein prescribed, shall take an oath before some justice of the peace of either of said counties, to run and mark said line fairly and impartially, according to the provisions of this act.

Shall make out
two plats of
said line and re-
port to Knox &
Harlan county
courts.

§ 4. It shall be the duty of said commissioners to make out two fair plats of said boundary line so run by them, with proper references, and a report accompanying the same, one of which shall be recorded in the Knox county court clerk's office, and the other in the Harlan county court clerk's office, to which courts respectively said commissioners are hereby directed to make report.

Compensation.

§ 5. That said commissioners shall have an allowance made by their respective county courts for their services, and the chain carriers and marker shall be allowed each seventy-five cents per day for their services, under the provisions of this act, one half to be levied by the Knox county court, and the other half by the Harlan county court; and in case it should happen the commissioners cannot or do not meet on the day named in this act, it shall be their duty to meet on some other day thereafter, to be fixed by them for the purpose of carrying out the provisions of this act; and when said line is so run and marked, it shall be the dividing line between said counties.

Approved March 22, 1851.

CHAPTER 587.

AN ACT to authorize the council of the city of Covington to create two additional voting precincts in said city.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That the city council of Covington be and are hereby authorized, by ordinance, to create one additional voting precinct in each magistrates' and consta-

bles' district in said city, and designate the bounds of said precincts, and the house or place of voting, and publish the same in the public journals of said city, at least ten days prior to the election, for the votes to be taken at the county and state elections.

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§ 2. That any person who shall vote out of his said district, as laid off by the authority aforesaid, shall be liable to the penalties prescribed against such, by the general laws, for voting out of their own district.

Approved March 22, 1851.

CHAPTER 588.

AN ACT in relation to the commissions of officers.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That upon the receipt, by the secretary of state, of the election returns, for the various officers elected by the people of this commonwealth, the governor shall cause commissions to be issued to those elected, which commissions shall be forwarded to the address of the officer commissioned, to the county seat of the county, for which, or for a district in which said officer may have been chosen.

Approved March 22, 1851.

CHAPTER 589.

AN ACT to provide for the payment of the unpaid orders of the school commissioners.

Whereas, it appears from the report of the superintendent of public instruction for the year 1850, that he has drawn his annual draft for the sum of \$144,006, and that the available income of the school fund for 1850 is only \$129,050 60—leaving a deficit of \$14,955 40; and whereas, it also appears that the legislature, at its present session, has passed many special laws for the benefit of school districts which failed to report in due time, and will probably pass others. Therefore,

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the second auditor be and he is hereby directed to issue his warrant for the unpaid orders of the school commissioners for the year 1850, and such other orders of school commissioners, when made out and presented in proper form, and drawn in virtue of special acts of this legislature, which have or may be passed, and the treasurer is directed to pay said orders, when presented, out of any moneys in the treasury not otherwise appropriated: *Provided*, the said auditor is to charge the amount of said orders to the board of education: *Provided further*, that the superintendent of public instruction shall not hereafter draw his draft for a greater sum of money than the avails of the school fund due at the time of drawing.

Approved March 22, 1851.

1851.

CHAPTER 593.

AN ACT to reduce into one the several acts concerning peddlers, and fixing the amount of tax to be paid by them.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, as follows:

License for the state, how obtained.

§ 1. Any person desirous of obtaining license to sell goods, wares and merchandise throughout the state, may apply to the clerk of any county court, and by paying fifty dollars, obtain a license therefor, with the seal of the county court affixed; which license shall authorize such person to sell as a peddler or itinerant merchant for one year, in any county in this state, any goods, wares and merchandise not prohibited by law to be sold.

How obtained for one county.

§ 2. Any person wishing to obtain the privilege of selling goods as a peddler in one county for one year, may obtain a license in the manner prescribed in the preceding section, by paying twenty dollars.

How obtained for 3 months, & am't to be paid.

§ 3. Any person wishing to obtain the privilege of selling goods, &c., as a peddler for three months, in any county in the state, may obtain a license as prescribed in the first section, by paying fifty cents for each one hundred voters in any county in which he may desire to sell his goods; the number of voters in such county to be ascertained from the last report of the county assessor preceding the application for license.

License to contain a description of person obtaining it.

§ 4. Every license issued in virtue of either of the three preceding sections, shall contain a description of the person to whom it is granted, and shall not be assignable; nor shall any clerk make a copy or duplicate of any license issued by him to a peddler; nor shall such license be construed to permit any other than the person named therein, nor more than one person, to sell under the same.

Selling goods in a house for less than one year deemed peddling.

§ 5. Every person who shall open and expose to sale or barter any goods, wares, or merchandise, in any room or storehouse in this state, for any time less than one year, shall be deemed and taken to be a peddler within the meaning of this act. This section shall not apply to any person who is a *bona fide* resident of the county, and whose goods, wares and merchandise shall have been regularly listed for taxation under existing revenue laws.

Selling in a boat without license deemed peddling.

§ 6. Any person who shall offer for sale, or sell by retail, any goods, wares or merchandise, other than the produce or manufacture of this state, in or from any boat or other water craft, on any of the navigable rivers or waters within the jurisdiction of this state, shall be deemed a peddler within the meaning of this act, and subject to the penalties prescribed herein for peddling without license.

Clerks of counties bordering on rivers may issue license.

§ 7. The clerk of any county court of any county bordering or adjoining the navigable rivers running through or bordering on this state, is authorized to issue a license to any person who may wish to sell goods, wares and mer-

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chandise in any boat or other water craft, upon the payment of eight dollars and fifty cents for each county in which the applicant may wish to sell his goods. The licenses authorized by this section to be in force for one year, and no longer.

§ 8. If any person shall violate the provisions of the preceding sections, by selling, or offering to sell, any goods, wares or merchandise, without first obtaining a license, he or she shall forfeit and pay one hundred dollars, recoverable before any justice of the peace, police or city judge, of the county in which the offense shall be committed, and, on failure to pay, shall be committed to the jail of the county, there to remain until the fine and costs are paid.

Penalty for violating the provisions of this act.

§ 9. The power to issue warrants for the arrest and trial of persons suspected of violating the provisions of this act, is hereby vested in justices of the peace of counties, police judges of towns and cities, and judges of cities. Any peddler failing or refusing to present his license, when required by either of the officers last mentioned, shall be deemed to be guilty of peddling without license.

Power to issue warrants vested in justices of the peace, &c.

§ 10. If any peddler shall sell any article of goods, wares, or merchandise within this state to any slave, without the written consent of his or her master, mistress, owner or overseer, such peddler shall forfeit and pay fifty dollars, recoverable in the same manner set forth in the two last sections, and, upon failure to pay the fine and costs, shall be imprisoned in the jail of the county for thirty days.

Penalty for selling to slaves

§ 11. Every person to whom a license may be issued for the state at large, under the first and third sections of this act, before he commences selling his goods in any county, other than the one in which the license was issued, shall present his license to the clerk of the county court of such county and procure his certificate of its genuineness. A failure to comply with this requisition shall subject said person to the same forfeiture as though he had no license.

Persons having a license for the state to have them authenticated in each county.

§ 12. All laws inconsistent with the foregoing provisions are hereby repealed.

Former laws repealed.

Approved March 22, 1851.

CHAPTER 596.

AN ACT exempting every custom house, post office, court room, and other offices that may be created within this Commonwealth by the General Government from taxation.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky,* That every custom house, post office, court room, and other office of the United States, that may hereafter be erected within this commonwealth, by the general government, or its order, and all the lands and lots on which they may be situated, shall be exempt from all county, city, or state taxes whatever.

Custom house &c., exempted from taxation.

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§ 2. That his excellency, the governor of this commonwealth, be, and he is hereby requested, to transmit an official copy of this act, under the seal of State, to his excellency, the president of the United States.

Approved March 22, 1851.

CHAPTER 601.

AN ACT to amend the exemption laws.

Proceedings
in case of a levy
on property.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky,* That when any execution of *fieri facias* or attachment for debt or fee bill shall hereafter be levied on the property of any defendant or defendants therein, it shall be lawful for said defendant or defendants to elect, to keep, and retain any property now subject to execution, upon giving up for sale, under said execution, an equal amount in value of property now exempt by law from said execution; and, in order to fix the value of the property so about to be given up on the one hand, and retained on the other, it shall be lawful for the plaintiff and defendant each to select a disinterested citizen of said county to value the same, under oath, to be administered by the officer; and, in case of their disagreement, for the officer to act as umpire between them; and, in case of the absence of either, or of the failure of either or both to select such valuers, the officer shall appoint them; whereupon, it shall be lawful for said officer to sell said property retained, and the said defendant shall be permitted to hold and retain, as exempt from that and any other execution or attachment for debt or fee bill, the property so selected by him; all of which facts shall be returned by the officer on his said execution; and it shall be the duty of said officer to give to said defendant or defendants a certified list of the property so reserved and retained by him or them; and if any officer, with notice thereof, shall levy on or sell said property, he shall be liable to the same actions as if he had levied on or sold the property originally exempt from execution.

Additional articles exempt
from execution.

§ 2. That hereafter there shall be exempt from execution, on all contracts hereafter made, one work horse, five head of sheep, one cooking stove and appendages, and other cooking utensils not exceeding in value twenty-five dollars, in addition to the specified articles now exempt from execution.

Proceedings to
be had when a
person dies not
leaving provisions
for support
of family, &c.

§ 3. That whenever any person shall hereafter die, leaving a family and no provisions on hand for the support of said family for six months, and no live stock out of which to take the same, it shall be lawful for the executor or administrator of said decedent to have valued, by two disinterested housekeepers, of no kin to the decedent or his family, under oath, a sufficient amount in value of the other

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property of said decedent, to support and maintain his family for six months; and the same shall not be assets in the hands of any representative of said decedent, for the payment of his debts: *Provided*, that the property herein exempted from sale under execution or distress, shall be subject to sale to pay the revenue tax and county levy, as heretofore: *Provided further*, that this act shall not operate so as to change the law between landlord and tenant.

Approved March 22, 1851.

CHAPTER 602.

AN ACT to change the place of voting in an election precinct in Jefferson county.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the place of voting is hereby changed from the grocery of Daniel Gilman, in Jefferson county, to the tavern house of David Gregory, in the same precinct and county.

Approved March 22, 1851.

CHAPTER 605.

AN ACT to establish an additional election precinct in Greenup county.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That there is hereby established an additional election precinct in Greenup county, to be bounded as follows: beginning in the Lewis county line, on the dividing ridge between the waters of Leatherwood and White Oak; thence with the Lewis county line to the Carter county line; thence with the Carter county line to where it crosses Tygert's creek; thence down Tygert's creek to the mouth of Big Loss creek; thence up the same to its head; thence with the dividing ridge between the waters of Leatherwood and Little and Big Oak, to the Lewis county line, the place of the beginning; and the place of voting in said precinct, shall be at the house of William Riley Smith.

Approved March 22, 1851.

CHAPTER 607.

AN ACT in relation to the Revenue.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the revenue of this commonwealth shall, hereafter, be due and payable into the treasury on the fifteenth day of December, in each year, instead of the fifteenth of January, as heretofore.

Approved March 22, 1851.

1851.

CHAPTER 609.

AN ACT to provide for changing the place of voting in the 5th district in Nicholas county.

Election to be held for the location of the voting place of district No. 5.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky,* That it shall be the duty of the proper officers holding the election in justices' district No. 5, in Nicholas county, on the second Monday in May next, to take the sense of the qualified voters of said district, upon the question of removing the place of voting in said district from its present location at Union meeting house, to Moorfield; and for that purpose two columns shall be opened in the poll book in said district at said election, one of which shall be headed 'for removal,' and the other 'against removal,' and the officers of said election shall propound to each voter, who shall vote at said election, the question: "Are you in favor of removing the voting place in this district to Moorfield, or against it?" and shall make a true record of the votes, and certify the result of the vote upon said question to the county court of said county, at the term succeeding said election, or any subsequent term; and if a majority of the votes cast for and against said removal shall have been in favor of said removal, it shall be the duty of said county court to make an order changing the voting place in said district to Moorfield, and thereafter all elections in said district shall be held at that place.

Duty of clerk of the court.

§ 2. That in the event said place of voting be changed as provided for in this act, the clerk of said court shall certify said change to the secretary of state.

Approved March 22, 1851.

CHAPTER 611.

AN ACT to change the lines of Magistrates' and Constables' districts in Boone and Russell counties.

Line between the 7th and 9th districts in Boone changed.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky,* That the line between the seventh and ninth magistrates' and constables' districts, in Boone county, be changed as follows, viz: commencing at Ballard's ford, on Mudlick creek, thence down said creek to Mrs. Ashbrook's, including her residence; thence south to Larkin Fullilove's, including his residence; thence to John and Jordan Harris' old line, and with said line to the Gallatin county line; thence east with said line to the Walnut Lick road.

Line of 1st district in Russell changed.

§ 2. That the boundaries of district No. 1, in Russell county, as laid off by the commissioners heretofore appointed to lay off said county into magistrates' and constables' districts, be so amended as, where the terms "Columbia and Green's ferry road" occur in said commissioners' report, to make it read, "the old road from Columbia to Green's ferry."

§ 3. That the secretary of state be directed to forward certified copies of this act to the clerks of the Boone and Russell county courts.

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Approved March 22, 1851.

CHAPTER 614.

AN ACT to regulate elections.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, as follows:

ELECTIONS.

ARTICLE I.

General Provisions.

§ 1. Whenever in this law, or in any statute hereafter passed, it is said an election shall be held, or an equivalent expression is used in reference to a state, district, or county election, it shall be deemed to mean an election by the qualified voters, to be held at the several places of voting in the various precincts or justices districts, where voters have a right to vote in the election of the officers designated.

Term election defined.

§ 2. Whenever a duty is imposed upon, or a power confided to a 'sheriff,' in reference to an election, the same shall apply to any other officer or person acting for him at an election, and to the deputies of the sheriff, such other officer or person, in the same manner as if the duty were imposed upon or the power confided expressly to such other officer, person or deputies; except, that in comparing returns, or in giving the casting vote in the election of a county judge to fill a vacancy, no deputy shall act without the express written authority of the principal.

Duty imposed on Sheriff in case of failure

§ 3. "Officer of an election," as used in this act, means a judge, clerk, or sheriff, or person acting for a sheriff at an election; also, a member of a board for examining poll-books or making returns.

Officer of election

ARTICLE II.

§ 1. The election precincts and places of voting in the several counties in this state shall be the same as the districts and places fixed by law for the election of justices of the peace, unless otherwise specially provided for by law.

Election precincts.

§ 2. That all elections in the city of Louisville, except those for justices of the peace and constables, shall be held in each ward thereof, the place of voting to be designated by the mayor and council thereof.

Elections in Louisville where held.

§ 3. It shall be the duty of the sheriffs of the several counties, on or before the first day of April, 1851, to have published, at the expense of the county, the boundaries of the districts, precincts, and places of voting, by causing

Sheriffs to publish boundaries of districts.

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County Court
may change dis-
tricts and pre-
cincts.

them to be published at least twice in some public newspaper, published in the county, if any, and by posting the same up at each of the places of voting in the county.

§ 4. Districts for the election of justices of the peace and constables, election precincts, and places of voting, may be changed by the county court, in the month of January or February next preceding the regular time of electing justices of the peace, on the petition of a majority of the voters of each district or precinct to be affected by the change; and when any such change is so made, the sheriff shall cause the same to be advertised as above required: *and provided*, if for any good cause, an election cannot be held at the house appointed as the place of voting, the judges of the election may, on the morning of the election, adjourn it to the most convenient place, after having publicly proclaimed the change.

Justices and
constables when
and where elect-
ed.

§ 5. An election shall be held in each of the districts, for the election of two justices of the peace and one constable, on the second Monday in May, 1851; and a like election shall be held for two justices of the peace on the first Saturday in May in every successive fourth year, and for a constable on the first Saturday in May in every successive second year; and at the same time in the city of Louisville, in their districts, for the election of justices of the peace and constables for said city.

When term of
office of Justice
and Constable
to commence.

§ 6. The term of office of justices of the peace and constables shall always commence on the first day of June in the year of their election, and expire when their successors are qualified. The justices of the peace shall enter on the duties of their respective offices as soon after their terms commence as they shall have received their commissions and qualified thereunder, and shall have filed the same, with the certificate of qualification thereon, in the county court clerk's office; and the several constables shall, before they enter upon the duties of their office, enter into bond, with good and sufficient securities, to be approved of by the court, in the county court, conditioned as now required by law, and shall have taken the oaths prescribed by the constitution and laws of Kentucky.

To give bond
and take oath.

ARTICLE III.

Elections, how held.

County courts
to appoint offi-
cers of elections
for May 1851.

§ 1. Each county court shall, in the month of March or April next, appoint two suitable persons to act as judges, and a clerk, for each place of voting in their respective counties, who shall act as judges and clerk of the elections to be held on the second Monday in May next; and where, in the opinion of the court, one set of officers of the election will not be sufficient to receive and record all the votes of any one precinct, the court shall appoint two sets of officers.

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When County Courts to appoint officers of elections.

§ 2. Each county court shall, in the month of June or July in every year, appoint two justices of the peace, if so many there be, or one justice and one other suitable person as judges, and a clerk of the election, for each precinct in its county. It shall also, in the month of March or April, every second year thereafter, appoint two suitable persons as judges and a clerk of elections for each district, for the election of justices of the peace in its county. Such judges and clerks shall hold their offices till their successors are appointed and qualify. Vacancies may be filled at any time by the court, or as herein provided for: *Provided*, that the court, in appointing officers of elections, shall appoint an equal number from each of the political parties, (whig and democrat,) so long as said parties shall continue in this state: *And, provided further*, that such counties as do not appoint at their March court, and have no county court in April, may hold a called term to appoint officers for the May elections; said court to be held at any time in the month of April.

§ 3. The sheriff shall, at least five days before the next ensuing election, give each judge and clerk written notice of his appointment.

Sheriff to notify officers.

§ 4. Should the court fail to appoint such judges or clerk, or either fail to attend for thirty minutes after the time for commencing the election, or refuse to act, the sheriff or his deputy shall appoint a suitable person or persons to act in his or their stead for that election.

Sheriff to appoint substitute.

§ 5. Each judge and clerk of an election shall, before entering on the duties of his office, take the oath prescribed by the constitution, before some justice of the peace, or it may be administered by the sheriff.

Judges and clerk to take oath.

§ 6. Such judges shall superintend the election, determine upon the legality of all the votes offered, see they are properly recorded, with the voter's name, in the poll-book to be kept for that purpose, attend to the proper summing up of the votes, certify the poll-book over their signatures, and deliver the same to the sheriff. They shall also make out duplicate statements, in writing, signed by them, of the number of votes received by each candidate, one copy of which shall be retained by each of the judges, and shall serve as evidence of the result of the election, if the poll-book is not produced.

Duties of judges of elections.

§ 7. Each clerk, in the presence of the judges, shall sign his name at the foot of every page of the poll-book, as the election progresses, so that the same may be thereby identified; and when the judges disagree, the sheriff shall act as umpire between them.

Duties of clerk.

§ 8. Whenever an election is required to be held for other than militia, town, or city officers, the sheriff shall give notice of the time and places of the election, and the offices to be filled, by written advertisements posted up at

Sheriff to give notice of elections, &c.

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the several places of voting in his county, at least twenty days before the election, and, by himself and deputies, shall cause the same to be held at the place appointed in each precinct or election district in his county, commencing at six o'clock in the morning, or as soon thereafter as may be, and closing at seven o'clock in the evening.

Coroner's duty if the office of sheriff is vacant

Duty of presiding judge in certain cases.

§ 9. If the officer of sheriff is vacant, or if the sheriff is himself a candidate, at any election, all his duties pertaining to that election shall be performed by the coroner and such deputies as he may appoint for that purpose; or if the coroner is absent, or his office vacant, or he is a candidate, then such duties of the sheriff shall be performed by some person appointed for that purpose by the presiding judge of the county court, and the deputies of such person, if the presiding judge is not himself a candidate. But if the presiding judge is himself a candidate, or if, from any cause, a sheriff is not in attendance, the judges of election at any precinct, or, if one of them is absent, the other judge may appoint a person to act in the place of the sheriff for the election on that day in that precinct. In case of disagreement between the judges, the clerk may appoint such person.

Persons not known, to be sworn and interrogated

§ 10. If a person offering to vote is not personally known to one of the judges, or the sheriff, as a qualified voter, he shall be interrogated, under oath administered by one of the judges or the clerk, as to his qualification. If, from his statement so made, he appears to be qualified, he shall be admitted to vote, unless his right is disputed by one of the judges or the sheriff, or by some other person present. If so disputed, the judges shall hear witnesses, not exceeding two in number on each side, as to his qualification, and decide as may appear right from the proof and the statement of the party. The word "sworn" shall be written opposite the name of every one voting after being sworn.

Foreigner may be made to produce naturalization papers.

Nothing in this section shall be construed to exempt a foreigner from producing his certificate of naturalization, unless his qualification is known to one of the judges or the sheriff.

Rules of residence.

§ 11. The following rules shall be observed in determining the residence of a person offering to vote:

1. That shall be deemed his residence where his habitation is, and to which, when absent, he has the intention of returning.

2. He shall not lose his residence by absence for temporary purposes merely; nor shall he obtain a residence by being in a county or precinct for such temporary purposes, without the intention of making the county or precinct his permanent home.

3. By removal to another state or county, with intention to make his permanent residence there, he loses his former residence.

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4. So, also, he loses his residence here by removal to and residence in another state, with intention to reside there an indefinite time, or by voting there, even though he may have had the intention to return here at some future period.

5. The place where the family of a married man resides shall, generally, be considered his residence, unless the family so resides for a mere temporary purpose. If his family is permanently in one place, and he transacts his business in another, the former shall be his residence.

§ 12. If a person is objected to as not being a citizen, in addition to any questions the judges may think proper to ask, the following shall be put to him:

Questions to be put to voters who are objected to.

1. Have you resided in this state two years, or in this county one year immediately preceding this election? and have you resided in this precinct sixty days next preceding this election?

2. Have you been absent from this state during the two years immediately preceding this election, and, if so, did you, while absent, consider this state as your home, or did you, while absent, vote in another state?

§ 13. If the person is objected to as not a resident of the county or precinct in which he offers to vote, then, in like manner, the following questions shall be put to him:

1. When did you last come into this county (or precinct)?

2. When you came into this county (or precinct,) did you come for a temporary purpose merely, or for the purpose of making it your home.

3. Did you come into this county (or precinct) for the purpose of voting in it?

ARTICLE IV.

Time of holding elections.

§ 1. The election of electors of president and vice president shall be held on the Tuesday next after the first Monday in November, one thousand eight hundred and fifty two, and on the same day in every fourth year thereafter. But the governor may, by his proclamation, appoint the same day in any other year, pursuant to the act of congress, for holding the election in the event of a vacancy in the offices of president and vice president.

Time of presidential election.

§ 2. The election of representatives in congress shall be held on the first Monday in August, one thousand eight hundred and fifty-one, and on the same day in every second year thereafter; but should there be a called session of congress between the expiration of any congressional term and the ensuing first Monday in August, the governor may, by his proclamation, published in three newspapers printed in this state, cause an election of representatives in congress to be held at an earlier day, if there is thirty days between the date of the publication and the day so assigned by him.

Time of election of members of Congress.

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Time of gen-
eral elections.

§ 3. The election of all other officers, not otherwise provided for, shall, after the general election in May next, be held on the first Monday in August; and thereafter, on the same day in each year, as the terms of office regularly expire.

Chancellor of
Louisville, &c.,
when elected.

§ 4. The chancellor, clerk, and marshal of the Louisville chancery court shall be elected on the second Monday in May next, by the qualified voters within its jurisdiction; and thereafter, on the first Monday in August of the year in which the term of office regularly expires.

ARTICLE V.

*Comparing Polls.*Board to com-
pare polls for
County Judge,
&c.—when to
meet, &c.

§ 1. The sheriff, clerk of the county court, and clerk of the circuit court, or any two of them, in office on the second Monday in May next, shall, on the Thursday thereafter, at ten o'clock in the morning, meet at the clerk's office of the county, compare the polls as to the election of county court judge, give a certificate of election to him who receives the highest number of votes, and, in case of two candidates receiving an equal number of votes, shall cause the same to be determined by lot, in the presence of not less than three other persons. In the absence of either of those officers, or if either cannot act, or one person holds both clerkships, the coroner, or, in his absence, the surveyor of the county, shall act in comparing the polls. The judge, immediately after receiving such certificate, shall take the oath of office, and enter upon the discharge of its duties, first having been duly commissioned by the governor.

Board to com-
pare polls for
county elections
—how constitu-
ted.

§ 2. The presiding judge of the county court, the clerk thereof, and the sheriff, or other officer acting for him at an election, shall constitute a board for examining the poll books of each county, and giving certificates of election. Any two of them may constitute a board; but, if the judge or clerk is a candidate, he shall have no voice in the decision of his own case. If, from any cause, two of the before-named persons cannot, in whole or in part, act in comparing the polls, their places shall be supplied by the two justices of the peace who may reside nearest to the court house.

Sheriff to de-
posit poll books
with the clerk.Board to meet
and give certifi-
cates of elec-
tion.

§ 3. On or before the Friday next after an election, the sheriff shall deposit with the clerk of the county court the poll books of the different precincts. On the next day, the board shall meet in the clerk's office between ten and twelve o'clock in the morning, compare the polls, ascertain the correctness of the summing up of the votes, and give triplicate or more written certificates of election, over their signatures, of those who have received the highest number of votes for any office exclusively within the gift of the voters of the county—one copy of the certificate to be retained in the clerk's office, another delivered to the persons elect-

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ed, and the other forwarded by the county clerk to the secretary of state at Frankfort. For offices not within such gift, they shall give duplicate or more written certificates, over their signatures, of the number of votes given in the county to each person voted for, particularizing therein the precinct at which the votes were given—one copy to be retained in the clerk's office, and the other delivered to the sheriff.

The poll-books shall, thereafter, remain in the clerk's office as part of its records. So, also, shall the certificate of any precinct judges, which may have been used in the absence of the poll-book of that precinct.

§ 4. Where two or more counties vote together in the choice of a representative or senator, the sheriffs of the respective counties shall, between ten and twelve o'clock in the morning of the first Monday after the election, meet in the clerk's office of the county court of the county first named in the senatorial or representative district, compare the certificates of the examining boards of the several counties, and, therefrom, give triplicate or more certificates of election, in writing, over their signatures, of the persons who appear to have received the highest number of votes—one copy of the certificate to be retained in the clerk's office, another delivered to the person elected, and the other forwarded to the secretary of state at Frankfort.

How & when polls to be compared when two or more counties vote together.

Certificates of election—where to be deposited.

§ 5. The certificate of election of a county officer shall be, in substance, in the following form:

Form of certificate of county officers.

COMMONWEALTH OF KENTUCKY, SCT.

We, A., B., and C., duly authorized to compare the poll-books for the county of _____, do certify that, at an election held in said county on the _____ day of _____, E. F. _____ was duly elected to fill the office of _____.

The certificate of the election of a justice of the peace or constable shall be altered to show that the election was held in a named district.

§ 6. After an election for governor, lieutenant governor, or other officer elective by the votes of the whole state, or for a judge of the court of appeals, clerk of that court, circuit judge, commonwealth's attorney, representative in congress, or electors of president and vice president, it shall be the duty of the board of examiners of poll-books for each county, immediately after the examination of the poll-books, to make out three or more certificates in writing, over their signatures, of the number of votes given in the county for each of the candidates for any of said offices. One of the certificates shall be retained in the clerk's office, another the clerk shall send by the next mail, under cover, to the secretary of state at Frankfort, and the other he shall transmit to the secretary by any private conveyance the clerk may select, free of cost.

County examiners to make out and forward certificates to sec. of state of votes for state officers.

§ 7. The governor, attorney general, and secretary of state, and, in the absence of either, the auditor, or any two

Board of examiners for state officers.

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When the board
is to meet, &c.

Three certifi-
cates for mem-
bers of congress.

Sec'y of state
to publish vote.

Elections to
be determined
by lot, when
there is a tie.

Electors of
president, how
their election
shall be deter-
mined.

Sheriffs and
county examin-
ers to determine
elections by lot,
when there is a
tie.

Term "vacan-
cy" defined.

of them, shall be a board for examining the returns of election for any of the officers named in the last section.

1. It shall be the duty of said board, when the returns are all in, or on the fourth Monday after the election, whether they are in or not, to make out in the secretary's office, from the returns made, duplicate certificates, in writing, over their signatures, of the election of those having the highest number of votes—one certificate to be retained in the office, and the other sent by mail to the person elected: *Provided*, that if all the returns are not made, the right to contest an election shall not be impaired.

2. In the case of the election of a representative in congress, there shall be three certificates—one to be retained in the office, another sent by mail to the person elected, and the other sent by mail to the clerk of the house of representatives at the seat of the federal government.

3. It shall be the duty of the secretary, immediately after the comparison of the returns, to cause a statement, therefrom, of the votes given in every county for each candidate, to be published in two newspapers printed in Frankfort.

4. If two or more persons shall be found to have received the highest and an equal number of votes for the same office, so that the election cannot be determined among the candidates by a plurality of votes, it shall be determined by lot, in such manner as the board may direct, and in the presence of not less than three other persons.

5. If one or more of the persons voted for as electors of president, is elected, then he or they when met to vote for president, shall determine which of the candidates having an equal number of votes shall be deemed to be elected, without casting any lot therefor. But if none is elected, then the board shall determine the election, by lot, between those having the highest and equal number of votes; except that they shall be arranged and drawn for in classes, according to their known pledges to vote for the different candidates, so that the whole vote of the state may be given to the same persons.

§ 8. Where the sheriffs of two or more counties, on comparison of the returns, or the board of examiners for a county, find that two or more persons have received the highest and an equal number of votes for the same office, they shall, in like manner, by lot, determine which of the candidates is elected.

ARTICLE VI.

Filling vacancy.

§ 1. The term "vacancy in an office," or any equivalent phrase, as used in this article, means such as exists when there is an unexpired part of the term of an office without a lawful incumbent therein, or when the person elected or appointed to an office fails to qualify according to

law, or when there has been no election to fill the office at the time appointed by law. It applies whether the vacancy is occasioned by death, resignation, removal from the state, county, or district, or otherwise.

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§ 2. A writ of election shall be signed by the officer or attested by the clerk of the court issuing the same, appoint the day for holding the election, and be directed to the proper sheriff or sheriffs.

Writs of election to be signed by officer issuing same.

1. When an election is to be held to fill a vacancy in any office by the voters in the whole state, or of a congressional or judicial district, a proclamation signed by the officer authorized to order the same, shall be used and stand in lieu of a writ of election.

Proclamation to issue for state elections.

2. Such proclamation, when for the whole state, shall be published, at least thirty days before the election, in two newspapers printed at the seat of government; and when for such district, at least twenty days before the election, in two newspapers printed in the district—if there are such papers printed at the seat of government or in the district. A copy of a proclamation for a district election shall, also, be forwarded by mail to the sheriff of each county in the district, twenty days before the election.

Proclamation to be published 30 days in two newspapers.

3. Immediately on receipt of a writ of election or proclamation of election, or other sufficient information thereof, the sheriff shall give notice thereof by advertisements, posted at the court house door and the several places of voting, and published in some newspaper printed in the county, if any such there be.

Duties of sheriff to give notice of election.

4. No writ for the election of a county officer, a representative, or senator, shall be issued, except so as to enable the sheriff to give such notice at least eight days before the election.

Writs of election to issue in time for sheriffs to give notice.

5. A writ of election from the county court shall be delivered to the sheriff by the clerk thereof, immediately after it is ordered. Other writs of election, or proclamations shall be forwarded by the officer issuing them, to the sheriff by mail. If, from any cause, the sheriff cannot properly act, he shall, immediately, hand the writ or proclamation to the person authorized to act in his place.

Writs of election or proclamations to be forwarded to sheriffs.

6. The next succeeding first Monday in August, shall always be the day appointed by writ or proclamation for holding an election, except as in this chapter allowed, unless to fill a vacancy in the court of appeals, or in the office of circuit judge, or unless there is or will be an intervening session of the legislature or of congress, rendering it necessary to fill a vacancy therein before the first Monday in August.

First Monday in August to be election day, except in special cases.

7. But when a vacancy so occurs that there is not time to give the requisite notice before the proper first Monday in August, a special election shall be ordered to take place on a day within six weeks after such first Monday.

Special elections.

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Vacancy in court of appeals, &c., when to be filled.

Presiding officer to issue writs when legislature is in session.

Chief Justice to issue writ to fill vacancy in office of governor.

Vacancy in office of sheriff—how filled.

Vacancy in office of clerk, surveyor, or coroner, &c., how filled.

Vacancy in justices' and constables' office—how filled.

Vacancy in office of comth's attorney, how filled.

Vacancy in office of presiding judge, filled by justices of the peace.

8. Except in the cases provided for in the last subsection, the day appointed for filling a vacancy in the court of appeals, or in a circuit court, shall be within six weeks after the governor receives notice of the vacancy.

§ 3. When a vacancy happens in either branch of the legislature during its session, the presiding officer of the house in which the vacancy occurs, shall issue the writ of election; if the legislature is not in session, the writ shall be issued by the governor.

§ 4. When a vacancy happens in the office of governor, requiring an election, the proclamation therefor shall be issued by the chief justice, or, if there is none, or he is absent from the state, by the judge of the court of appeals having the shortest unexpired term.

§ 5. A vacancy in the office of sheriff shall be temporarily filled by the county court, until the next succeeding August election, and until the successor then chosen shall qualify.

1. A vacancy in the office of coroner, surveyor, county court clerk, county attorney, jailer, or assessor, shall be filled in like manner, until the next succeeding August election, and until the successor then chosen has qualified. A writ of election to fill the remaining vacancy shall be issued by the court; or, if the judge is not at the time in the county, by the clerk under the order of two justices of the peace.

2. A vacancy in the office of justice of the peace or constable shall be filled in like manner, temporarily, until the next succeeding May or August election, whichever shall first transpire, and until the successor then chosen shall qualify; and a writ of election to fill the remaining vacancy shall be issued in like manner.

3. A vacancy in the office of commonwealth's attorney or circuit court clerk, shall, in like manner, be temporarily filled for the same time by the circuit judge of the district, who shall, also, issue the writ or proclamation for an election to fill the remaining vacancy.

§ 6. That when a vacancy shall occur in the office of any presiding judge in this commonwealth, within the first three years for which he may have been elected to said office, it shall be the duty of the clerk of the county court, or, in his absence, the clerk of the circuit court, to issue a writ of election, directed to the sheriff of his county, who shall proceed to hold an election by the qualified voters of his said county—after having given due notice, according to the rules and regulations for electing county judges; but if the vacancy shall be for a less period than one year, then the clerk of the county or circuit court shall notify all the magistrates of his said county that a vacancy has occurred, and requiring the said justices to convene at the court house to fill said vacancy.

1. The justices shall convene at ten o'clock in the morning of the appointed day, or as soon thereafter as may be, and at the same hour every succeeding day, Sunday excepted, until the vacancy is filled.

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Justices to convene at 10 o'clock.

2. A majority of those present shall fill the vacancy, and their written certificate thereof shall be handed to and preserved by the clerk of the court.

Majority to act.

3. In case of a tie, or if a majority cannot be otherwise obtained after three ballots, the sheriff shall give the casting vote.

Tie vote—how determined.

4. When necessary, the writ of election to fill the vacancy shall issue from the court, or its clerk, as in the last section directed.

Writs of election, how to issue.

§ 7. All resignations of office shall be tendered to the court, or officer who is required to issue writs of election, or who is required to fill the vacancy. All such resignations shall be in writing, and received and recorded by said court or officer; when it is required to be filled by the circuit judge, he shall cause a record to be made of said resignation in the orders of his court of that county in which the officer lives; and when by the county court, said court shall cause a record of the fact to be made in the records of its court; and when by the governor, he shall cause the same to be recorded in the executive journal.

To whom resignations are to be tendered.

ARTICLE VII.

Contested Election.

§ 1. When the election of a governor or lieutenant governor is contested, a board for determining the contest shall be formed in the following manner:

Contested election of governor.

1. On the third day after the organization of the general assembly which meets next after the election, the senate shall select, by lot, three of its members, and the house of representatives shall select, by lot, eight of its members, and the eleven so selected shall constitute a board—seven of whom shall have power to act.

Board—how constituted.

2. In making the selection by lot, the name of each member present shall be written on a separate piece of paper, every such piece being as nearly similar to the others as may be. Each piece shall be rolled up, so that the name thereon cannot be seen, nor any particular piece ascertained or selected by feeling. The whole, so prepared, shall be placed by the clerk in a box on his table; and, after it has been well shaken and the papers therein well intermixed, and the clerk having been blindfolded by the presiding officer, shall draw out one paper, which shall be opened and read aloud by the presiding officer; and so on, until the required number is obtained. The persons whose names are so drawn, shall be members of the board.

Selections of members to be made by lot.

3. The members of the board so chosen by the two houses, shall be sworn by the speaker of the house of rep-

Members of board to be sworn.

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representatives to try the contested election, and give true judgment thereon according to the evidence, unless dissolved before rendering judgment.

When the board
is to meet, &c.

4. The board shall, within twenty-four hours after its selection, meet, appoint, its chairman, and assign a day for hearing the contest, and adjourn from day to day, as its business may require.

How members
are to be ex-
cused from serv-
ing on board.

5. If any person, so selected, shall swear that he cannot, without great personal inconvenience, serve on the board, or that he feels an undue bias for or against either of the parties, he may be excused by the house from serving on the board; and if it appears that a person, so selected, is related to either party, or is liable to any other proper objection on the score of his impartiality, he shall be so excused.

Deficiencies to
be supplied.

6. Any deficiency in the proper number, so created, shall be supplied by another draw from the box.

Powers of
board.

7. The board shall have power to send for persons, papers, and records, to issue attachments therefor, signed by its chairman, swear witnesses by its chairman or clerk, and issue commissions for taking proof.

Incumbent to
retain the office
if there is a tie.

When new elec-
tion is to be or-
dered, &c.

8. Where it shall appear that the candidates receiving the highest number of votes given have received an equal number, the incumbent shall be adjudged to retain the office. Where the person returned is found not to have been legally qualified to receive the office at the time of his election, a new election shall be ordered. Where another than the person returned, shall be found to have received the highest number of legal votes given, such other shall be adjudged to be the person elected and entitled to the office.

Decisions to
be by six mem-
bers of board.

9. No decision shall be made but by the vote of six members. Its decision, when made, shall be final and conclusive. It shall be made out in triplicate, and signed by the members voting therefor. One copy shall be retained by the chairman or clerk, and one delivered to the presiding officer of each house.

New election
to be proclaimed.

10. If a new election is required, it shall be immediately ordered, by the proclamation of the speaker of the house of representatives, to take place within six weeks thereafter, and on a day not sooner than thirty days thereafter.

When office is
vacant.

11. When a new election is ordered, or the incumbent adjudged not to be entitled, his powers shall immediately cease; and if the office is not adjudged to another, it shall be deemed to be vacant.

Penalty when
member of the
board fails to at-
tend.

12. If any member of the board willfully fails to attend its sessions, he shall be reported to the house to which he belongs, and, thereupon, such house shall, in its discretion, punish him by fine or imprisonment.

When board
is to be dissolved.

13. If no decision of the board is given during the then session of the legislature, it shall be dissolved, unless, by

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joint resolution of the two houses, it is empowered to continue longer.

§ 2. When the election of a member of the general assembly is contested, that branch of the legislature to which he belongs, within three days after its organization, shall, in like manner, select a board of not more than nine nor less than five of its members, for determining the contest; which board shall be governed by the same rules, have the same power, and be subject to the same penalties as would the board to determine the contested election of governor, and shall report its decision to that branch of the legislature by which it was appointed, for its further action.

Contested elections of members of Legislature, how decided.

§ 3. The governor, attorney general, auditor, treasurer, and secretary of state, or any three of them, shall be a board, with like powers as those named in the last section, for determining the contested election of any officer, other than governor or lieutenant governor, elective by the voters of the whole state, or of a judge or clerk of the court of appeals, circuit judge, chancellor of the Louisville chancery court, or commonwealth's attorney.

Board for determining contested elections other than governor--how constituted.

1. Each member of the board, before entering on his duties as such, shall be sworn by some judge or justice to try the contested election, and give true judgment thereon according to the evidence.

Members of board to take oath.

2. The board and its acts shall be governed by the rules named in the last section, where the same are applicable to its duties.

Rules of government.

3. A majority of the board shall be necessary to a decision, which shall be in writing, and signed in duplicate by the members concurring therein—one copy to be retained in the secretary's office, and the other delivered to the successful party or sent to him by mail.

Majority to decide.

4. The governor shall, immediately after such decision, issue the proper commission, or order a new election, as the case may require.

Governor to issue commissions.

§ 4. The judge of the county court, and the two justices of the peace residing nearest to the court house in each county, shall be a board, with like powers as those named in the last section, for determining the contested election of any officer elective by the voters of the county or any justice's district therein, or of any police judge or police marshal, except members of the general assembly. If any of said persons are absent from the county or cannot properly act, then said board shall be filled by adding thereto—first, the county court clerk, then the justice of the peace who resides next nearest to the court house, and so on, excluding such as cannot properly act, till the board is full. If either party shall make affidavit, and file the same with a county board, that such party verily believes that either or both of said justices will not give a fair and impartial trial,

Board of contested elections for county and town officers.

- 1851.** then the board shall be filled by other justices in lieu of those thus objected to.
- Rules to govern board.** 1. The board and its acts shall be governed by the rules named in the next two preceding sections, where the same are applicable to its duties.
- Decisions to be in writing.** 2. The decision of the board shall be given in writing and signed in triplicate—one copy to be entered on the minutes of the court, another handed to the successful party, and the other, when necessary for obtaining a commission, forwarded by mail to the secretary of state.
- Court to issue writ of election.** 3. When the decision so requires, the court shall immediately issue a writ for a new election.
- Notice to be given of contest.** § 5. No application to contest the election of an officer shall be heard, unless notice thereof, in writing, signed by the party contesting, is given to the officer returned.
- Grounds of contest to be stated.** 1. The notice shall state the grounds of the contest, and none other shall afterwards be heard, as coming from such party.
- When notice to be given.** 2. In the case of an officer elective by the voters of the whole state or any judicial district, the notice must be given within thirty days after the election. In the case of a senator or representative, it must be given within fifteen days; and in that of any other officer, within ten days after the election.
- When proof to be taken.** 3. Immediately after such notice, either party may proceed to take proof by depositions, under the same rules and regulations as govern the taking of depositions in suits in chancery, except that no dedimus shall be required for taking a deposition out of the state. The depositions shall be sealed up by the officer taking them, and directed to the board having power to decide the contest, or to the clerk of the senate, or clerk of the house of representatives, as the case may require.
- Depositions evidence but can have other proof** 4. Such depositions properly taken, shall be read as evidence before that branch of the legislature or the board having jurisdiction of the case; but either can, in its discretion, call for and hear other proof.
- When proof is to close.** 5. The taking of depositions to be used before the legislature, or either branch thereof, shall close ten days before the next meeting thereof, or, if in session when the notice is given, until it is ordered to close; if before a county board, it shall close three weeks after the notice of the contest; and if before the other board, six weeks after the notice.
- When case to be heard by the county board.** 6. The case shall be heard by a county board on the fourth Monday after the service of notice; and by the other board, the eighth Monday after such service; but either may, for good cause, allow further time.
- Who to pay costs, &c.** 7. The cost of the proceeding shall be adjudged against the unsuccessful party, and a certificate thereof given by the board, or by the clerk of either branch of the legisla-

ture, as the case may require. A judgment for the same may be obtained after five days' notice, in a circuit or county court.

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ARTICLE VIII.

Pay of officers of elections, &c.

§ 1. The costs of all elections held in any county shall be paid out of the county levy.

Costs of elections, how paid.

§ 2. Officers of elections shall receive pay as follows: judges, one dollar, each; sheriffs, one dollar, each; clerks, two dollars, each. In all elections to fill vacancies, the same fees, except that the clerk shall only receive one dollar. For comparing the returns of two or more counties in the election of a senator or representative, a sheriff shall receive two dollars, and one dollar and fifty cents for each twenty five miles of travel in going and returning.

Pay of officers of elections.

§ 3. The compensation to witnesses, and officers taking depositions, in cases of contested elections, shall be the same as in suits at law.

Compensation of witnesses.

§ 4. The clerk of the county court shall have twenty five cents for each certificate of election or appointment of an officer, to be paid by the person receiving it.

Pay of county court clerks.

ARTICLE IX.

Election of United States Senator.

§ 1. Senators in the congress of the United States, shall be elected by *viva voce* vote of the members of the two branches of the general assembly on joint ballot.

Election of U. States Senator, when to be held.

1. The election shall be held on the second Monday after the commencement of that session of the general assembly which next precedes the expiration of the senatorial term of the incumbent; and if no election is made on that day, the two houses may adjourn from time to time until the election is made.

2. If a vacancy occurs, when the legislature is not in session, in an unexpired term, the election shall be held on the second Monday after the commencement of the next session; and if, during the session of the legislature, or if notice thereof is only received during such session, the election shall be held on the seventh day next after any member of either house moves to go into an election; or, if that seventh day is Sunday, then on the next succeeding day. In either case, the election shall be proceeded with as before directed.

Vacancy occurring during session, when to be filled.

§ 2. When the governor is notified, by the clerk of either house, of the election of a senator, or when the governor appoints a senator, he shall give a written certificate of such election or appointment, attested by his signature and the seal of the state. If he refuses to give such certificate after an election, the presiding officer and clerk of either house may give the same, over their signatures.

Governor to give certificate of election of senator, &c.

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ARTICLE X.

*Electors of President.*Electors of
president, when
to meet.

§ 1. The electors of president and vice president of the United States, shall convene in the capitol at the seat of government, at ten o'clock in the morning of the first Wednesday in December after their election, give their votes at or after twelve o'clock, and make return thereof according to law.

Electors may
fill vacancies.

§ 2. If, from any cause, one or more of the electors elected, fails to attend—as before directed—by twelve o'clock of that day, those in attendance shall fill the place of those absent by the election of another person or persons, who shall have the same power as if originally elected by the people for that purpose.

ARTICLE XI.

*When officers to commence their duties.*What officers
governor is to
commission.

§ 1. The governor shall commission all officers elective by the voters of the whole state, other than governor and lieutenant governor, or of any judicial district, and, also, the chancellor of the Louisville chancery court.

When officers
to commence
duties.

All such officers shall commence the duties of their respective offices as soon as they have received their commissions and qualified thereunder according to law.

Officers to com-
mence duties as
soon as they
qualify.

§ 2. All officers—except sheriffs, justices, constables, and militia officers—elected by the voters of a single county, or of some town or city therein, shall commence the duties of their respective offices so soon as they have received certificates of their election and qualified thereunder according to law.

Officers to fill
vacancies, when
to commence
duties.

§ 3. Every officer appointed to fill a vacancy, shall commence the duties of the office so soon as he has received his commission, or certificate of appointment, and qualified thereunder according to law.

Officers to hold
office until suc-
cessors qualify.

§ 4. Every officer not otherwise provided for by the constitution, shall hold his office until his successor has duly qualified.

ARTICLE XII.

*Penalties against frauds on elections.*Penalty for il-
legal voting.

§ 1. Any citizen of this state who shall vote in any precinct without having been a resident thereof for sixty days next preceding the election, or who shall vote twice at the same election, shall be fined, at the discretion of a jury, not less than fifty nor more than one hundred dollars; and, on failing to pay the fine and costs, may be imprisoned in the county jail till the fine and costs are paid: *Provided*, that he shall not be so imprisoned for a longer time than three months.

§ 2. Any non-resident of this commonwealth who shall vote in this state, shall be subject to confinement in the penitentiary, for not less than one nor more than three years.

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Non-resident, penalty.

§ 3. Whoever shall vote in this state before having resided in the same two years, or in the county, town, or city, where the vote is given, one year, and also in the precinct where said vote is given, sixty days next preceding the election, or before being of the age of twenty-one years, shall be fined the sum of fifty dollars; and, on failing to pay the fine and costs, shall be imprisoned in the county jail thirty days.

Penalty for voting before being in state, county, or precinct, long enough.

§ 4. Whoever, not being a citizen of the United States, shall personate or offer to personate another, or who shall use or offer to use the naturalization papers of another, with the intention of giving an illegal vote, shall be imprisoned not more than six months, and fined not more than five hundred dollars; and whoever shall loan or hire out naturalization papers, with the intention of aiding another in giving an illegal vote, shall be subject to the same penalty.

Penalty for a foreigner who votes, or falsely personates another.

§ 5. Whoever shall knowingly cause, aid, or assist another to give an illegal vote, shall be subject to the same pains and penalties that the person giving such vote is subject to by law; and whoever shall offer, promise, or give a bribe, in money or property, to any person for his vote, and whoever shall receive such bribe, shall be fined not less than one hundred nor more than five hundred dollars, and in default of payment, shall be confined in the county jail for a period not less than three nor more than six months.

Penalty against the accessory of illegal voter, or briber of a voter.

§ 6. Whoever shall willfully and corruptly swear or affirm falsely under the provisions of this act, shall be subject to all the pains and penalties denounced by the laws of this state against willful and corrupt perjury.

Penalty for false swearing at elections.

§ 7. Any judge of an election who shall knowingly receive any illegal vote, or refuse to receive a legal vote, or any election officer who shall willfully neglect any duty prescribed by law, or who shall be guilty of any corrupt conduct in the execution of such office, shall be fined not less than fifty nor more than five hundred dollars; and, on failing to pay the fine and costs, shall be imprisoned in the county jail one day for each two dollars of said fine and costs remaining unpaid.

Penalty against judge of election, for knowingly receiving an illegal vote.

§ 8. Whoever shall willfully refuse to testify as to the qualifications of any one offering to vote, when so required, as provided in this act, shall be fined fifty dollars.

Penalty for refusing to testify.

§ 9. Any justice of the peace or judge of an election may issue a warrant for the apprehension of person charged with a violation of the provisions of this act; upon which, the same proceedings shall be had, before two justices of the peace, and the defendant discharged or held to bail, as is provided by law in other criminal and penal

Justice or judge of an election may issue warrants for persons violating election laws.

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Duty of judge
who believes
person is about
to violate law.

Circuit courts
to have jurisdic-
tion of cases un-
der this law.
Justices to have
concurrent ju-
risdiction, &c.

Cases to be tried
by jury.

Penalty for
breaking up or
preventing an
election.

Convicts to be
deprived of
right of suffrage.

Penalty against
officers failing
or refusing to
perform their
duties.

Prosecutions
to be commene-
d within 12
months.

Fees of comth's
attorneys.

charges: *Provided*, that no warrant shall issue except upon the oath of the party making the charge.

§ 10. Every judge of an election, when he believes that any person is about to violate any of the provisions of this act, shall inform such person of the penalty for such violation; and it shall be the duty of all election officers to give information to the next grand jury of the county of any such violations; and every circuit judge shall give this act in special charge to each grand jury of his circuit.

§ 11. The circuit courts of the state shall have jurisdiction of all cases arising under this act, by presentment and indictment of a grand jury, as in other penal cases: *Provided*, that justices of the peace shall have concurrent jurisdiction with the circuit courts of all cases under this act, where the fine cannot exceed fifty dollars: *And, provided further*, that such cases shall be tried by a jury, and that the defendant shall have the right to appeal to the circuit court, by executing bond with good surety, conditioned according to law.

§ 12. Any person, who, by himself or in aid of others, shall forcibly break up or prevent, or attempt to break up or prevent, the lawful holding of an election, or so obstruct or attempt to obstruct the same, or so prevent or attempt to prevent any qualified voter from giving his vote, shall be fined from fifty to five hundred dollars, and imprisoned not more than one year.

§ 13. Any person condemned to confinement in the penitentiary for larceny, robbery, forgery, counterfeiting, or perjury, or any such like crime, shall forfeit his right of suffrage for ten years after his conviction, but shall be restored to his right of suffrage upon receiving a pardon from the governor.

§ 14. Any officer who, without sufficient cause, fails to discharge his duty after any election, as one of a board for comparing the poll-books or election returns, or to decide a contested election, and any officer who shall act corruptly and with willful and manifest partiality in the discharge of such duty, shall be fined not less than fifty nor more than five hundred dollars; and, on failing to pay the fine and costs, shall be imprisoned in the county jail one day for each two dollars of said fine and costs remaining unpaid.

§ 15. No prosecution shall be had under this act, unless the same is commenced within twelve months from the time of the commission of the offense.

§ 16. The commonwealth's attorney shall receive one-third of any fine assessed and collected, whenever he prosecutes the offender to conviction,

Approved March 24, 1851.

CHAPTER 615.

1851.

AN ACT to fix the time of holding Circuit Courts in this Commonwealth.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That circuit courts for the several counties in each circuit court judicial district in this commonwealth shall commence in the counties at the times hereinafter specified, and be held the number of juridical days allotted to each term, if the business of said court shall require it, viz :

In District No. 1.—In the county of Fulton, on the first Monday in March and September, and continue, each, twelve juridical days. Fulton

In the county of Hickman, on the third Monday in March and September, and continue, each, twelve juridical days. Hickman

In the county of Ballard, on the first Monday in April and October, and continue, each, twelve juridical days. Ballard

In the county of McCracken, on the third Monday in April and October, and continue, each, twelve juridical days. McCracken

In the county of Marshall, on the first Monday in May and November, and continue, each, six juridical days. Marshall

In the county of Calloway, on the second Monday in May and November, and continue, each, twelve juridical days. Calloway

In the county of Graves, on the fourth Monday in May and November, and continue, each, twelve juridical days. Graves

In the county of Livingston, on the first Monday in June and December, and continue, each, twelve juridical days. Livingston

In the county of Crittenden, on the third Monday in June and December, and continue, each, twelve juridical days. Crittenden

There shall, also, be held terms for the trial of chancery and criminal causes, in the county of McCracken, commencing on the first Monday in July, and in the county of Livingston, commencing on the fourth Monday in July, and continuing six juridical days, each. Chancery terms in McCracken and Livingston.

In District No. 2.—In the county of Trigg, on the last Monday in February and the last Monday in August, and continue, each, twelve juridical days. Trigg

In the county of Caldwell, on the second Monday in March and continue eighteen juridical days, and on the second Monday in September, and continue twelve juridical days. Caldwell

In the county of Christian, on the first Monday in April and the last Monday in September, and continue, each, eighteen juridical days. Christian

In the county of Union, on the fourth Monday in April and the third Monday in October, and continue, each, twelve juridical days, unless there are five Mondays in said months, and then eighteen juridical days each. Union

1851.	In the county of Hopkins, on the second Monday in May and the first Monday in November, and continue, each, twelve juridical days.
Hopkins	
	In the county of Henderson, on the fourth Monday in May and the third Monday in November, and continue, each, twelve juridical days.
Henderson	
	In the county of Todd, on the second Monday in June and the first Monday in December, and continue, each, twelve juridical days.
Todd	
Chancery terms in Caldwell, Christian and Hopkins.	And there shall be held chancery terms, commencing in Caldwell on the second Monday in July and continue two weeks; in the county of Christian on the second Monday in August and continue two weeks; in the county of Hopkins on the first Monday in July and continue six juridical days.
	<i>In District No. 3.</i> —In the county of Daviess, on the first Monday in March and the first Monday in September, and continue, each, twelve juridical days.
Daviess	
	In the county of Hancock, on the third Monday in March and the third Monday in September, and continue, each, six juridical days.
Hancock	
	In the county of Breckinridge, on the fourth Monday in March and the fourth Monday in September, and continue, each, six juridical days.
Breckinridge	
	In the county of Meade, on the first Monday in April and the first Monday in October, and continue, each, twelve juridical days.
Meade	
	In the county of Hardin, on the third Monday in April and the third Monday in October, and continue, each, twelve juridical days; and there shall be held a term in said county, commencing on the second Monday in July, and to continue twelve juridical days, for the trial of chancery and criminal causes only.
Hardin	
	In the county of Larue, on the first Monday in May and the first Monday in November, and continue, each, six juridical days.
Larue	
	In the county of Grayson, on the second Monday in May and the second Monday in November, and continue, each, six juridical days.
Grayson	
	In the county of Ohio, on the third Monday in May and the third Monday in November, and continue, each, six juridical days.
Ohio	
	In the county of Muhlenburg, on the fourth Monday in May and the fourth Monday in November, and continue, each, six juridical days.
Muhlenburg	
Chancery term in Daviess.	And there shall be held a term in the county of Daviess, commencing on the Monday succeeding the fourth Monday in May, and continue twelve juridical days, if the business require it, for the trial of chancery and criminal causes only.
Logan	<i>In District No. 4.</i> —In the county of Logan, on the first

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Monday in March and second Monday in August, and continue, each, twelve juridical days.

In the county of Simpson, on the third Monday in March and fourth Monday in August, and continue, each, twelve juridical days.

Simpson

In the county of Allen, on the first Monday in April and the second Monday in September, and continue, each, twelve juridical days.

Allen

In the county of Monroe, on the third Monday in April and the fourth Monday in September, and continue, each, six juridical days.

Monroe

In the county of Barren, on the fourth Monday in April and the first Monday in October, and continue, each, eighteen juridical days.

Barren

In the county of Edmonson, on the third Monday in May and the fourth Monday in October, and continue, each, six juridical days.

Edmonson

In the county of Butler, on the fourth Monday in May and the first Monday in November, and continue, each, six juridical days.

Butler

In the county of Hart, on the first Monday in June and the second Monday in November, and continue, each, twelve juridical days.

Hart

In the county of Warren, on the fourth Monday in June and the fourth Monday in November, and continue, each, eighteen juridical days.

Warren

There shall, also, be held a term for the trial of chancery and criminal causes in Barren county, to commence on the second Monday in January, in each year, and continue two weeks; one in the county of Logan, commencing on the second Monday in July, and continue two weeks; and one in the county of Monroe, commencing on the fourth Monday in July, and continue six juridical days.

Chancery terms
in Barren, Lo-
gan & Monroe.

In District No. 5.—In the county of Green, on the second Monday in February and the second Monday in August, and continue, each, twelve juridical days.

Green

In the county of Taylor, on the fourth Monday in February and the fourth Monday in August, and continue, each, twelve juridical days.

Taylor

In the county of Casey, on the second Monday in March and the second Monday in September, and continue, each, six juridical days.

Casey

In the county of Lincoln, on the third Monday in March and the third Monday in September, and continue, each, twelve juridical days.

Lincoln

In the county of Pulaski, on the first Monday in April and the first Monday in October, and continue, each, twelve juridical days.

Pulaski

In the county of Wayne, on the third Monday in April and the third Monday in October, and continue, each, six juridical days.

Wayne

1851.	In the county of Russell, on the fourth Monday in April and the fourth Monday in October, and continue, each, six juridical days.
Russell	
Adair	In the county of Adair, on the first Monday in May and the first Monday in November, and continue, each, twelve juridical days.
Cumberland	In the county of Cumberland, on the third Monday in May and the third Monday in November, and continue, each, six juridical days.
Clinton	In the county of Clinton, on the fourth Monday in May and the fourth Monday in November, and continue, each, six juridical days.
Chancery terms in Green, Adair, Cumberland, Wayne and Pulaski.	There shall, also, be held in the following counties a term for the trial of criminal and chancery causes only, which shall continue six juridical days each: in the county of Green, on the second Monday in June; in the county of Adair, on the third Monday in June; in the county of Cumberland, on the fourth Monday in June; in the county of Wayne, on the first Monday in July; in the county of Pulaski, on the second Monday in July.
Jefferson	<i>In District No. 6.</i> —In the county of Jefferson, on the second Monday in January, and continue forty-eight juridical days; on the fourth Monday in May, and continue forty-two juridical days; on the third Monday in July, and continue twelve juridical days; on the first Monday in November, and continue, forty-two juridical days.
Shelby	In the county of Shelby, on the third Monday in March, and third Monday in September, and continue, each, twelve juridical days.
Bullitt	In the county of Bullitt, on the second Monday in April and the second Monday in October, and continue, each, twelve juridical days.
Spencer	In the county of Spencer, on the third Monday in May and the fourth Monday in October, and continue, each, six juridical days.
Boyle	<i>In District No. 7.</i> —In the county of Boyle, on the second Monday in February and August, and continue, each, twelve juridical days.
Nelson	In the county of Nelson, on the last Monday in February and the last Monday in August, and continue, each, twelve juridical days.
Washington	In the county of Washington, on the second Monday in March and September, and continue, each, twelve juridical days.
Marion	In the county of Marion, on the fourth Monday in March and September, and continue, each, twelve juridical days.
Mercer	In the county of Mercer, on the second Monday in April and October, and continue, each, twelve juridical days.
Anderson	In the county of Anderson, on the fourth Monday in April and October, and continue, each, twelve juridical days.

In the county of Garrard, on the second Monday in May and November, and continue, each, twelve juridical days.

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Garrard

Chancery terms in Marion, Nelson, Washington, Anderson, Mercer, Garrard and Boyle.

There shall, also, be held terms for the trial of chancery and criminal causes, in the county of Marion, on the first Monday in June, and continue one week; in the county of Nelson, on the second Monday in June, and continue two weeks; in the county of Washington, on the fourth Monday in June, and continue two weeks; in the county of Anderson, on the second Monday in July, and continue one week; in the county of Mercer, on the third Monday in July, and continue one week; in the county of Garrard, on the fourth Monday in July, and continue one week; in the county of Boyle, on the fourth Monday in November, and continue one week.

In District No. 8.—In the county of Carroll, on the first Monday in February and the last Monday in July, and continue, each, six juridical days.

Carroll

In the county of Kenton, at Covington, on the second Monday in February and August, and continue, each, eighteen juridical days; at Independence, in Kenton county, on the first Monday in June and December, and continue, each, six juridical days.

Kenton

In the county of Oldham, on the first Monday in March and September, and continue, each, six juridical days.

Oldham

In the county of Henry, on the second Monday in March and September, and continue, each, twelve juridical days.

Henry

In the county of Trimble, on the fourth Monday in March and September, and continue, each, six juridical days.

Trimble

In the county of Gallatin, on the first Monday in April and October, and continue, each, six juridical days.

Gallatin

In the county of Grant, on the second Monday in April and October, and continue, each, twelve juridical days.

Grant

In the county of Owen, on the fourth Monday in April and October, and continue, each, twelve juridical days.

Owen

In the county of Boone, on the second Monday in May and November, and continue, each, twelve juridical days.

Boone

And there shall be held in the county of Kenton a special chancery and criminal term, to commence on the fourth Monday in June, and continue twelve juridical days; and there shall be held in the county of Oldham a special chancery and criminal term, on the second Monday in June, should the judge of said court deem it necessary so to do, to continue one week.

Chancery terms in Kenton and Oldham.

In District No. 9.—In the county of Scott, on the fourth Monday in February and August, and to continue, each, twelve juridical days.

Scott

In the county of Bourbon, on the second Monday in March and September, and to continue, each, twelve juridical days.

Bourbon

In the county of Nicholas, on the fourth Monday in March and September, and to continue, each, twelve juridical days.

Nicholas

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Mason

In the county of Mason, on the second Monday in April and October, and to continue, each, eighteen juridical days.

Bracken

In the county of Bracken, on the first Monday in May and November, and to continue, each, twelve juridical days.

Harrison

In the county of Harrison, on the third Monday in May and November, and to continue, each, twelve juridical days.

Pendleton

In the county of Pendleton, on the first Monday in June, and to continue twelve juridical days, and the first Monday in December, and continue six juridical days.

Campbell

In the county of Campbell, on the third Monday in June and second Monday in December, and to continue twelve juridical days, each term.

Chancery terms
in Bourbon and
Harrison.

There shall be held terms for the trial of criminal and chancery causes, in the county of Bourbon, on the second Monday in July, and in the county of Harrison, on the third Monday in July, and to continue one week, each.

Montgomery

In District No. 10.—In the county of Montgomery, on the first Monday in March and September, and continue, each, twelve juridical days.

Bath

In the county of Bath, on the third Monday in March and September, and continue, each, twelve juridical days.

Fleming

In the county of Fleming, on the first Monday in April and October, and continue, each, twelve juridical days.

Morgan

In the county of Morgan, on the third Monday in April and October, and continue twelve juridical days, each term.

Carter

In the county of Carter, on the first Monday in May and November, and continue six juridical days, each term.

Lawrence

In the county of Lawrence, on the second Monday in May and November, and continue six juridical days, each term.

Greenup

In the county of Greenup, on the third Monday in May and November, and continue six juridical days, each term.

Lewis

In the county of Lewis, on the fourth Monday in May and November, and continue six juridical days, each term.

Chancery terms
in Greenup and
Fleming

There shall, also, be held terms for the trial of chancery and criminal causes, in the county of Greenup, on the third Monday in July, and continuing one week; in the county of Fleming, commencing on the second Monday in August, and continuing one week.

Fayette

In District No. 11.—In the county of Fayette, on the first Monday in February and the first Monday in August and continue, each, twenty-four juridical days.

Woodford

In the county of Woodford, on the first Monday in March and the first Monday in September, and continue, each, twelve juridical days.

Madison

In the county of Madison, on the third Monday in March and the third Monday in September, and continue, each twelve juridical days.

In the county of Franklin, on the first Monday in April and the first Monday in October, and continue, each, eighteen juridical days. 1851, Franklin

In the county of Clarke, on the fourth Monday in April and the fourth Monday in October, and continue, each, twelve juridical days. Clarke

In the county of Estill, on the first Monday in June and the first Monday in December, and continue, each, six juridical days. Estill

In the county of Jessamine, on the third Monday in May and the third Monday in November, and continue, each, twelve juridical days. Jessaminta

And there shall be held terms for the trial of criminal and chancery causes, commencing in Fayette county on the second Monday in June and continue twelve juridical days; in the county of Franklin, on the fourth Monday in June and continue twelve juridical days; in the county of Clarke, on the second Monday in July and continue six juridical days; in the county of Madison on the third Monday in July and continue six juridical days. Chancery terms Fayette, Franklin, Clarke, and Madison.

In District No. 12.—In the county of Rockcastle, on the first Monday in March and the second Monday in August, and continue, each, six juridical days. Rockcastle

In the county of Laurel, on the second Monday in March and the third Monday in August, and continue, each, six juridical days. Laurel

In the county of Whitley, on the third Monday in March and the fourth Monday in August, and continue, each, six juridical days. Whitley

In the county of Knox, on the fourth Monday in March and the first Monday in September, and continue, each, twelve juridical days. Knox

In the county of Owsley, on the second Monday in April and the third Monday in September, and continue, each, six juridical days. Owsley

In the county of Clay, on the third Monday in April and continue twelve juridical days, and the fourth Monday in September, and continue six juridical days, except when there shall be five Mondays in September, and in that case twelve juridical days. Clay

In the county of Harlan, on the first Monday in May and the first Monday in October, and continue, each, six juridical days. Harlan

In the county of Perry, on the second Monday in May and the second Monday in October, and continue, each, six juridical days. Perry

In the county of Letcher, on the third Monday in May and the third Monday in October, and continue, each, six juridical days. Letcher

In the county of Pike, on the fourth Monday in May, Pike

1851. and the fourth Monday in October, and continue, each, six juridical days.

Floyd In the county of Floyd, on the first Monday in June and the first Monday in November, and continue, each, twelve juridical days.

Johnson In the county of Johnson, on the third Monday in June and the third Monday in November, and continue, each, six juridical days.

Breathitt In the county of Breathitt, on the fourth Monday in June and the fourth Monday in November, and continue, each, six juridical days.

Judges authorized to hold special chancery and criminal terms. § 2. That it shall be lawful for the several circuit court judges in this commonwealth to hold special terms in the counties of their respective circuits, for the trial of chancery and criminal causes, when the business, in his opinion, may require it, and may require a grand jury to be impaneled, if he deem it necessary, by an order, in or out of term time; and where such order shall be made in vacation, notice of the term shall be given in such manner as the judge, in his order, shall prescribe; and where such term is ordered for the trial of criminal causes, the judge shall give to the clerk such instructions in regard to the summoning of a grand and petit jury as he shall deem right.

§ 3. This act shall take effect on the fifteenth day of June, 1851.

Approved March 22, 1851.

CHAPTER 616.

AN ACT to establish a Code of Practice in civil cases in the Courts of this Commonwealth.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, as follows:

PRELIMINARY PROVISIONS.

§ 1. This act shall be known as the Code of Practice in civil cases, of this state.

§ 2. Remedies in civil cases in the courts of this state, are divided into two classes:

1. Actions.

2. Special proceedings.

§ 3. A civil action is an ordinary proceeding in a court of justice, by one party against another, for the enforcement or protection of a private right, or the redress or prevention of a private wrong. It may also be brought for the recovery of a penalty or forfeiture.

§ 4. Every other remedy in a civil case, is a special proceeding.

TITLE 1.

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FORM OF CIVIL ACTION.

§ 1. The forms of all actions and suits, heretofore existing, are abolished; and hereafter, there shall be but one form of action for the enforcement or protection of private rights, and the redress or prevention of private wrongs, which shall be called a civil action.

Forms of actions abolished. One form called a civil action.

§ 2. In such action, the party complaining is known as the plaintiff, and the adverse party as the defendant.

Plaintiff and defendant.

§ 3. The proceedings in a civil action may be of two kinds: 1. Ordinary; 2. Equitable.

Proceedings ordinary and equitable.

§ 4. The plaintiff may prosecute his action by equitable proceedings, in all cases where courts of chancery, before the adoption of this code, had jurisdiction; and must so proceed, in all cases where such jurisdiction was exclusive.

Must be equitable, if chancery had jurisdiction

§ 5. In all other cases, the plaintiff must prosecute his action by ordinary proceedings.

In other cases, by ordinary proceedings.

§ 6. An error of the plaintiff as to the kind of proceedings adopted, shall not cause the abatement or dismissal of the action, but merely a change into the proper proceedings by an amendment in the pleadings, and a transfer of the action to the proper docket.

Error of plaintiff not cause of dismissal, but may be changed to proper docket.

§ 7. The error mentioned in the last section may be corrected by the plaintiff, without motion, at any time before the defendant has answered; or afterwards, on motion in court.

Error of plaintiff may be corrected by motion.

§ 8. The defendant shall be entitled to have the correction made, in the following cases:

Cases in which the correction may be made.

1. Where the action has been commenced by equitable proceedings, the defendant, by motion made at the time of filing his answer, may have them changed into ordinary proceedings, when it appears that, by the provisions of section five, the plaintiff should have adopted ordinary proceedings, and, in addition, that his answer presents a defense on which he is entitled to a trial by jury.

2. Where the action has been commenced by ordinary proceedings, the defendant, by motion made at or before the time of filing his answer, may have them changed into equitable proceedings, when it appears that, by the provisions of section four, the plaintiff should have adopted equitable proceedings.

§ 9. Where the action has been properly commenced by ordinary proceedings, either party shall have the right, by motion, to have any issue, which, before the adoption of this code, was exclusively cognizable in chancery, tried in the manner hereinafter prescribed in cases of equitable proceedings; and if all the issues are such as, before the adoption of this code, were cognizable in chancery, though none were exclusively so, the defendant shall be entitled to have them all tried as in cases of equitable proceedings.

If action is commenced by ordinary proceedings and issues are equitable, defendant can have case tried as equitable proceedings.

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Error as to
kind of proceed-
ings waived if
not made in time
Mode of except-
ing.

§ 10. An error as to the kind of proceedings adopted in the action, is waived by failure to move for its correction at the time and in the manner prescribed in this chapter; and all errors in the decisions of the court, on any of the motions named in this chapter, are waived, unless excepted to at the time; which may be done by the clerk noting, at the end of such decision, words of the following import: "To which decision, the plaintiff (or defendant) excepts."

Provisions of
code as to civil
actions apply to
both kinds.

§ 11. The provisions of this code, concerning the prosecution of a civil action, apply to both kinds of proceedings, unless the contrary appears.

TITLE II.

OF THE TIME OF COMMENCING CIVIL ACTIONS.

CHAP. 1. *Actions in general.*

2. *Actions for the recovery of real property.*
3. *Actions other than for the recovery of real property.*
4. *General provisions.*

CHAPTER 1.

Actions in general.

Provisions of
code repealing
statutes of limi-
tation do not
apply to exist-
ing suits or ac-
tions.

§ 12. The provisions of this code, repealing certain statutes of limitation, and fixing the periods within which actions must be brought, shall not apply to actions or suits already commenced, nor to cases in which the right of action has already accrued; but the laws of limitation, now in force, shall be applicable to such cases, according to the subject of the action, and without regard to the form.

Certain stat-
utes of limita-
tion repealed.

§ 13. The following acts and parts of acts are repealed, viz:

The act to reduce into one the several acts and parts of acts concerning limitations of actions, approved December 17, 1796. So much of the 46th section of the act to reduce into one the several acts concerning the examination and trial of criminals, grand and petit juries, venires, and for other purposes, approved December 17, 1796, as regards civil actions and suits for penalties. The 1st and 2d sections of an act to amend an act, entitled, an act to amend and reduce into one the several acts, or parts of acts, concerning limitations of actions, and for other purposes, approved January 22, 1814. The 5th section of an act authorizing suits against heirs and devisees, and limiting the time of bringing suits against executors and administrators, approved February 9, 1819. An act to provide for limitations in certain actions, approved December 1, 1823. So much of the 22d section of an act to amend the several acts against unlawful gaming, approved February 2, 1833, as regards civil actions for penalties. An act to amend an act, entitled, an act to reduce into one the several acts and

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parts of acts concerning limitations of actions, approved February 16, 1838. An act to amend the law limiting actions for the recovery of land by females and their heirs, approved February 7, 1840. An act limiting actions against sureties, approved February 8, 1838, except so much thereof as relates to the discharge of sureties in judgments. The 2d section of an act respecting conveyances by married women, approved February 23, 1849. So much of an act limiting the time of bringing suits against heirs and devisees, approved March 7, 1850, as prescribes the period within which original suits may be brought against heirs and devisees.

§ 14. Civil actions can only be commenced within the periods prescribed in this title after the cause of action has accrued.

When civil actions shall be commenced.

CHAPTER 2.

Actions for the recovery of real property.

§ 15. An action for the recovery of real property, can only be brought within fifteen years after the right to bring it first accrued to the plaintiff, or to the person through whom he claims.

For the recovery of real property within 15 years.

§ 16. If, at the time when the right of any person to bring an action for the recovery of real property first accrued, such person was an infant, married woman, or of unsound mind, then such person, or the person claiming through him, may, notwithstanding the period of fifteen years has expired, bring the action within three years after the time at which the person to whom the right first accrued, ceased to be under such disability as existed when the same so accrued, or died—whichever has happened first.

Savings in favor of infants, married women and lunatics.

§ 17. The time within which an action for the recovery of real property may be brought, shall not be extended by reason of any disability which did not exist when the right to bring the action first accrued; nor by reason of any disability of the heirs of the person to whom the right first accrued.

Limitation does not stop for subsequent disability, nor disability of heirs.

§ 18. The period within which an action for the recovery of real property may be brought, shall not, in any case, be extended beyond thirty years from the time at which the right to bring the same first accrued to the plaintiff, or to the person through whom he claims, by reason of any death, or the existence or continuance of any disability whatever.

Period for bringing an action shall not extend beyond 30 years.

§ 19. No continual claim upon or near any real property, shall preserve a right to bring an action.

Continual claim does not preserve a right.

§ 20. The provisions of the act, entitled, an act to compel the speedy adjustment of land claims, approved February 9, 1809, are continued in force.

Seven years law continued in force.

§ 21. An action by a female, or her heirs or devisees, for the recovery of real property, for the conveyance of which

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Action by female or her heirs, who has conveyed, to be brought within 3 years after disability. Certificate of clerk sufficient to prove execution of deed.

she has, jointly with her husband, executed a deed after her arrival at the age of twenty-one years, and acknowledged such execution before an officer authorized to take an acknowledgment of a married woman's deed conveying her inheritance, can only be brought within three years next after she became discoverd, or within three years next after the right to bring the action accrued to her heirs, where she died during coverture. In any such case, the certificate of the officer that the deed was acknowledged before him by the female, shall be sufficient proof of its execution by her, though such certificate may not, in other respects, be in compliance with the law.

Further savings in favor of females and her heirs.

§ 22. If, in any case mentioned in the last section, the female, when she became discoverd, was of unsound mind, the action may be brought by her, or those claiming under her, within three years next after the removal of such disability, or next after her death—whichever has happened first. And where the female dies during coverture, and her heirs are all under the disability of coverture, infancy, or unsoundness of mind when the right to bring the action accrues to them, the action may be brought within three years next after the removal of such disability as to all of them.

But the time not extended beyond 10 years.

§ 23. But the period within which an action for the recovery of real property, in any case mentioned in section twenty-one, may be brought, shall not be extended beyond ten years from the time the female became discoverd, or the right of her heirs to bring the action first accrued—whichever has happened first—by reason of any disability whatever.

CHAPTER 8.

Actions other than for the recovery of real property.

Civil actions for the recovery of other than real property—

Within 15 years on judgments, decrees, & written contracts.

§ 24. Civil actions other than for the recovery of real property, shall only be commenced within the following periods after the cause of action has accrued:

§ 25. Within fifteen years:

An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, the period to be computed from the date of the last execution regularly issued thereon.

An action upon a recognizance, or a written contract, other than one for which a different limitation is hereinafter prescribed.

§ 26. Within ten years:

Within 10 years on all bonds of officers, administrators, &c. in-junction bonds, &c.

An action upon the official bond of a sheriff, marshal, sergeant, clerk, constable, or any other public officer, or his deputy.

An action upon the official bond of a personal representative, guardian, curator, or committee.

An action upon a bond for an appeal, supersedeas, attachment, injunction or order of arrest, or for the delivery

of property; or a bond for the forthcoming of property, or to obey or perform an order or judgment of a court in an action; or a bond for costs, or any other bond taken by a court or judge, or by an officer pursuant to the direction of a court or judge, in an action; or upon a replevin, sale, or delivery bond taken under an execution, or warrant of distress.

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An action upon an indemnifying bond taken under a statute, or upon a bond to suspend a proceeding or sale under an execution or distress warrant.

§ 27. Within five years:

An action against a surety in any recognizance, bond, or contract, except where a shorter period is hereinafter prescribed.

Within 5 years against sureties, trespass to real property, bills exchange, &c.

An action upon a contract, express or implied, other than one for which a different limitation is herein prescribed.

An action upon a liability created by statute, other than a penalty or forfeiture.

An action for trespass upon real property.

An action for the profits of, or damages for withholding real property.

An action for taking, detaining, or injuring personal property, including actions for the specific recovery thereof.

An action for an injury to the rights of the plaintiff, not arising on contract, and not hereinafter enumerated.

An action upon a bill of exchange, check, draft, or order, or upon a promissory note placed upon the footing of a bill of exchange.

An action to enforce the liability of a steamboat, or other vessel, in a case in which it is specifically subject, by statute, to the plaintiff's claim.

An action upon an account concerning the trade of merchandise between merchant and merchants, or their agents.

An action for relief on the ground of fraud.

§ 28. Within three years:

An action against a surety in the official bond of a clerk of a court, sheriff, coroner, jailer, constable, sergeant, or marshal, or against a surety in the bond of a sheriff or collector for the collection of the revenue or the county levy, or of a town or city tax.

Within 3 years against sureties in official bonds of clerk, &c.

An action to recover a penalty or forfeiture imposed by the laws against gaming, or by the laws prohibiting the importation of slaves.

§ 29. Within one year:

An action for an injury to the person of the plaintiff, or of his wife, child, ward, or servant other than a slave.

An action for a malicious prosecution or arrest.

An action for seduction, criminal conversation, or breach of promise of marriage.

Within one year for slander, seduction, merchants accounts breach of promise of marriage, &c.

An action upon a statute for a penalty or forfeiture, oth-

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er than those for which a different limitation is prescribed in this chapter.

An action for libel or slander.

An action for the escape of a prisoner arrested or imprisoned on civil process.

An action to enforce the liability of bail, or of a sheriff or other officer as bail.

An action upon an account for goods, wares, and merchandise sold and delivered, or for any article charged in a store account. In every such action, the limitation shall be computed from the first day of January next succeeding the respective dates, or times of the delivery, of the several articles charged in the account, and judgment shall be rendered for no more than the amount of such articles as were actually charged, or delivered, within the year preceding that in which the action is brought. The dates of the delivery of the several articles charged in any such account, and of the receipts taken for them, shall be truly stated in the account. And if any merchant or trader shall wilfully postdate any article charged in such account, or the receipt for the delivery thereof, he shall forfeit tenfold the amount of such article, to be recovered by any person, with costs, before a justice, where the penalty does not exceed fifty dollars, and where it does exceed that sum, in the circuit court.

In equitable proceedings, cause of action accrued when fraud discovered.

Between merchants, cause of action accrued from last item.

§ 30. In an action by equitable proceedings for relief on the ground of fraud, the cause of action shall not be deemed to have accrued until the discovery of the fraud.

§ 31. In an action brought to recover a balance due upon a mutual, open, and current account concerning the trade of merchandise, between merchant and merchant, or their agents, where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item proved in the account claimed, or proved to be chargeable on the adverse side.

Right of action on bond of guardian, &c., accrues when ward, &c. attains 21 years.

§ 32. The right of action upon the official bond of a guardian, executor, or administrator, or of a sheriff, or other officer acting as such, in favor of a ward, or of a devisee or distributee, who was an infant when the bond was given, shall not be deemed to have accrued before the plaintiff attained the age of twenty-one years. Where there are several wards secured by the same bond, or several devisees or distributees who, or some of whom, were infants when the bond was given, the right of action of each one of such infants shall not be deemed to have accrued before he attained the age of twenty-one years.

For relief can only be brought within 10 years.

§ 33. An action for relief, not hereinbefore provided for, can only be commenced within ten years after the cause of action has accrued.

Limitation to apply to cases by the commonwealth.

§ 34. The limitations prescribed in this chapter, shall apply to actions brought by or in the name of the commonwealth, in the same manner as to actions by private persons.

CHAPTER 4.

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General provisions.

§ 35. Where an action is commenced in a county in which it is required or specially permitted, by this code, to be brought, or where any other action is brought in the county of the residence of the defendant, or of one of several proper defendants, every such action shall be deemed to have been commenced at the date of the first summons issued therein where it is served, or where, if it is not served, such summons and successive summonses in the action, regularly issued from term to term, are delivered to the proper officer, and where the last of them is served, or a warning order is regularly made in the action without the intermission of a term.

When an action is deemed to have been commenced.

§ 36. In every other case, the action shall be deemed to have been commenced at the date of the summons actually served upon the defendant, or one of several proper defendants, or at the date of the warning order regularly obtained therein.

Action deemed to have been commenced at date of summons.

§ 37. If a person entitled to bring any action mentioned in the third chapter of this title—except for a penalty or forfeiture, or for an escape of a defendant arrested or imprisoned on civil process, or against bail, or an officer liable as bail—was, at the time the cause of action accrued, an infant, married woman, or of unsound mind, the action may be brought within the like number of years after the removal of such disability, or the death of the person—whichever happened first—that is allowed to a person having no such impediment, to bring the same after the right accrued; except that it shall, in no case, be brought after fifteen years from the time the right accrued. This section shall not apply to the slaves of infants.

Time allowed infants, &c., to sue—not to exceed 15 years. Slaves of infants not embraced.

§ 38. If a person dies before the time at which the right to bring any action mentioned in the third chapter of this title would have accrued to him if he had continued alive, and there is an interval of more than three years between his death and the qualification of his personal representative, such representative shall, for the purposes of this title, be deemed to have qualified on the last day of such period of three years.

If person dies before right of action accrues, three years allowed administrator to sue.

§ 39. If a person entitled to bring any action mentioned in the third chapter of this title, dies before the expiration of the time limited for the commencement thereof, and the cause of action survives, the action thereon may be brought by his representative, after the expiration of that time, and within one year from his death.

If a person die before the bar is complete, one year allowed to sue.

§ 40. If a person, against whom any action mentioned in the third chapter of this title may be brought, dies before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced against his personal representative, after the

If defendant die before bar is complete, one year allowed to sue administrator, and 2 years to sue heirs.

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No action to be brought against administrator after 5 years after qualification.

No action to be brought against heirs and devisees after seven years.

If defendant is absent from the state, time computed from his return.

If defendant absconds or conceals himself, time to be deducted.

If judgment is reversed 1 year allowed to bring new action.

If plaintiff is a subject of a country at war with U. S. continuance of war to be deducted.

Time of plaintiff's confinement in penitentiary deducted.

Time action is stayed by injunction deducted.

Disability will not avail unless it existed when right accrued.

expiration of that time, and within one year after the qualification of such representative; and if there is no personal representative, the action may be brought against his heirs or devisees, or both, after the expiration of the time limited for bringing the same, and within two years after his death.

§ 41. No action against a personal representative, who has settled his accounts, and distributed the estate of his testator or intestate, on any judgment or decree against such testator or intestate, or on any contract made by him, shall be brought, after the expiration of five years from the qualification of such personal representative.

§ 42. No action upon a cause which accrued against a deceased person in his lifetime, shall, where his estate has been divided and distributed, be brought against his heirs or devisees, separately, or jointly with his personal representative, after the expiration of seven years from his death.

§ 43. If, at the time any cause of action mentioned in the third chapter of this title accrues against a resident of this state, he is absent therefrom, the period limited for the commencement of the action thereupon against him, shall be computed from the time of his return to this state.

§ 44. Where a cause of action mentioned in the third chapter of this title, accrues against a resident of this state, and he, by departing therefrom, or by absconding or concealing himself, or by any other indirect means obstructs the prosecution of the action, the time of the continuance of such obstruction, shall not be computed as any part of the period within which the action may be commenced. But this section shall not avail against any other person than him so obstructing, notwithstanding another might have been jointly sued with him if there had been no obstruction.

§ 45. If an action is commenced within due time, and a judgment therein for the plaintiff is reversed, the plaintiff, or, if he dies and the cause of action survives, his representative, may commence a new action, within one year after the reversal.

§ 46. Where a plaintiff is an alien, and a subject or citizen of a country at war with the United States, the time of the continuance of the war, is not part of the period limited for the commencement of the action.

§ 47. The time of the confinement of a plaintiff in the penitentiary is not a part of the period limited for the commencement of the action.

§ 48. Where the commencement of an action is stayed by injunction, the time of the continuance of the injunction is not part of the period limited for the commencement thereof.

§ 49. No person can avail himself of a disability, in any action mentioned in the third chapter of this title, unless it existed when his right of action accrued.

§ 50. When two or more disabilities co-exist in the same person at the time the right of action accrues, the limitation does not attach, until they are all removed.

§ 51. After a mortgagee of real property, or any one claiming under him, has had fifteen years' continued possession thereof, no action shall be brought by the mortgagor, or any one claiming under him, to redeem it, unless, in the meantime, the mortgagee, or person claiming under him, in possession of the property, has made a written acknowledgment of the right to redeem: in which case, the action to redeem may be brought within fifteen years from the time of such acknowledgment.

§ 52. The provisions of the last section shall apply, in the case of a mortgage of personal property, with the difference that the period within which the action to redeem may be brought, shall be five years.

§ 53. No acknowledgment or promise shall be sufficient evidence of any new or continuing contract, by which to take any case out of the limitations prescribed in this title, unless the same is in writing, and signed by the party to be charged thereby, or his agent. But no acknowledgment or promise by a personal representative of a decedent, or by one of several joint contractors, shall charge the estate of such decedent, or any other of such joint contractors, in any case in which, but for the promise or acknowledgment, the limitation would apply.

§ 54. Where, by the laws of any other state or country, an action upon a judgment or decree rendered in such state or country, cannot be maintained there by reason of the lapse of time, and such judgment or decree is incapable of being otherwise enforced there, an action upon the same cannot be maintained in this state, except in favor of a resident thereof who has had the cause of action from the time it accrued. And no action shall be brought, upon a judgment or decree rendered out of this state more than ten years before the commencement of such action, against a person who has resided in this state ten years next preceding it.

§ 55. When a cause of action has arisen in another state or country, between residents of such state or country, and by the laws thereof an action cannot be maintained thereon by reason of the lapse of time, no action can be maintained thereon in this state.

§ 56. The provisions of this title shall not apply in the following cases:

1. In the case of a continuing and subsisting trust.
2. To an action by a vendee of real property in possession thereof to obtain a conveyance of it.

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If two disabilities exist when right accrued both must be removed.

Possession of mortgagee 15 years bars right of redemption, unless mortgagee makes written acknowledgment, then 15 years from that time.

Same of personal property, except 5 years.

Written acknowledgment necessary to take case out of statute.

Acknowledgment of personal representative or co-obligor not sufficient.

Cause barred in one state cannot be maintained against a resident.

Ten years residence in this state bars right of action.

Cause between residents of another state, if barred there, is barred here.

Provisions of title do not apply to trusts, or to action by vendee to obtain a conveyance.

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TITLE III.

PARTIES TO CIVIL ACTIONS.

- CHAP. 1. *Parties to actions generally.*
 2. *Parties to certain actions.*
 3. *Married women.*
 4. *Infants.*
 5. *Persons of unsound mind, and prisoners.*

CHAPTER 1.

Parties to actions generally.

Action to be prosecuted in name of party in interest.

Action by assignee subject to discount, set-off, &c.

If assignment not authorized by statute, assignor must be party.

Does not apply to bills of exchange and negotiable notes.

If right is transferred pending the action, to be continued in his name, or assignee made party.

Executor, trustee or guardian may bring action in his own name without joining beneficiary.

All persons interested may be joined as plaintiffs in action.

Any person interested who claims adverse to plaintiff may be made defendant.

Parties united in interest must be joined as plaintiffs or defendants.

Where parties are numerous one or more may sue or defend for all.

§ 57. Every action must be prosecuted in the name of the real party in interest, except as provided in section sixty.

§ 58. In the case of an assignment of a thing in action, the action by the assignee is without prejudice to any discount, set-off, or defense now allowed. And where the assignment is not authorized by statute, the assignor must be a party, as plaintiff or defendant. This section does not apply to bills of exchange, nor to promissory notes placed upon the footing of bills of exchange, nor to common orders or checks.

§ 59. Where the right of the plaintiff is transferred or assigned during the pendency of the action, it may be continued in his name, or the court may allow the person to whom the transfer or assignment is made, to be substituted in the action, proper orders being made as to security for the costs.

§ 60. An executor, administrator, guardian, trustee of an express trust, a person with whom, or in whose name, a contract is made for the benefit of another, or a person expressly authorized by statute to do so, may bring an action, without joining with him the person for whose benefit it is prosecuted.

§ 61. All persons having an interest in the subject of an action, and in obtaining the relief demanded, may be joined as plaintiffs, except where it is otherwise provided in this code.

§ 62. Any person may be made a defendant, who has, or claims, an interest in the controversy, adverse to the plaintiff, or who is a necessary party to a complete determination and settlement of the question involved in the action.

§ 63. Of the parties to the action, those who are united in interest, must be joined as plaintiffs or defendants; but if the consent of one who should have been joined as plaintiff, cannot be obtained, he may be made a defendant, the reason being stated in the petition.

§ 64. Where the question is one of a common or general interest of many persons, or where the parties are numerous and it is impracticable to bring them all before the court within a reasonable time, one or more may sue, or defend, for the benefit of all.

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Persons severally liable in a contract may all or any one be included in action

Where two or more are jointly bound, action may be brought against one or all.

If any are dead representatives may be joined with survivors.

If all are dead action may be against representatives of all.

Action or judgment against some jointly bound no bar against others.

If controversy cannot be decided without others they must be brought in.

In an action for real or personal property all interested may be made parties.

If affidavit is made by defendant before answer that another claims the property, court may make order for its safe-keeping.

If third party fails to come in he is barred. He may be made defendant.

§ 65. Persons severally liable upon the same contract, including the parties to bills of exchange, and promissory notes placed upon the footing of bills of exchange, common orders and checks, and sureties on the same or separate instruments, may all, or any of them, or the representatives of such as may have died, be included in the same action, at the plaintiff's option.

§ 66. Where two or more persons are jointly bound by contract, the action thereon may be brought against all or any of them, at the plaintiff's option. Where any of the persons so bound, are dead, the action may be brought against any or all of the survivors with the representatives of all or any of the decedents, or against the latter, or any of them. Where all the persons so bound are dead, the action may be brought against the representatives of all, or of any of them. An action or judgment against any one or more of several persons jointly bound, shall not be a bar to proceedings against the others.

§ 67. The court may determine any controversy between parties before it, when it can be done without prejudice to the rights of others, or by saving their rights. But when a determination of the controversy between the parties before the court, cannot be made without the presence of other parties, the court must order them to be brought in.

§ 68. Where, in an action for the recovery of real or personal property, any person having an interest in the property, applies to be made a party, the court may order it to be done.

CHAPTER 2.

Parties to certain actions.

§ 69. Upon affidavit of a defendant before answer, in any action upon contract or for the recovery of personal property, that some third party, without collusion with him, has or makes a claim to the subject of the action, and that he is ready to pay or dispose thereof as the court may direct, the court may make an order for the safe keeping, or for the payment, or deposit in court, or delivery of the subject of the action to such person as it may direct, and an order requiring such third party to appear in a reasonable time and maintain or relinquish his claim against the defendant, and, in the meantime, stay the proceedings. If such third party, being served with a copy of the order, fails to appear, the court may declare him barred of all claim in respect to the subject of the action, against the defendant therein. If such third party appears, he shall be allowed to make himself defendant in the action, in lieu of the original defendant, who shall be discharged from all liability to either of the other parties in respect to the subject of the action, upon his compliance with the order of the court for the payment, deposit, or delivery thereof.

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Last section
to apply to sher-
ff, & he to have
benefit of it.

In action a-
gainst officer for
property, plain-
tiff in execution
may be substi-
tuted.

Tenant may
sue landlord
for property un-
der a distress
warrant.

Indorsement
by officer of levy
sufficient taking

Action against
steamboat may
be brought a-
gainst owners
without naming
them.

Owner or part
owner, whether
named or not,
may defend ac-
tion.

Several per-
sons having dis-
tinct claims a-
gainst steam-
boat may unite
in action.

§ 70. The provisions of the last section shall be appli- cable to an action brought against a sheriff, or other officer, for the recovery of personal property taken by him under an execution or distress warrant, or for the proceeds of such property so taken, and sold by him. And the defendant in any such action, shall be entitled to the benefit of those pro- visions against the party in whose favor the execution or distress warrant issued, upon exhibiting to the court the process under which he acted, with his affidavit that the property, for the recovery of which, or its proceeds, the ac- tion is brought, was taken under such process.

§ 71. In an action against a sheriff, or other officer, for the recovery of property taken under an execution or dis- tress warrant, the court may, upon the application of the defendant, and of the party in whose favor the execution or distress warrant issued, permit the latter to be substi- tuted as the defendant, security for the costs being given.

§ 72. An action to recover the possession of specific per- sonal property taken under a distress warrant, where it is brought by the tenant, or his assignee or undertenant, may be against the party who sued out the warrant; and the property claimed in such action may, under the order for its delivery, be taken from the officer who seized it, where he has no other claim to hold it than that derived from the warrant. The indorsement of a levy on the property, made upon the warrant by the officer holding it, shall be a suf- ficient taking of the property, to sustain the action against the party who sued out the warrant.

§ 73. An action to enforce the liability of a steamboat, or other vessel, for the removal of a slave, or to enforce a lien upon a steamboat for the wages of its officers or crew, or for work done upon, or materials, supplies, stores, or pro- visions furnished to such boat, or the liability thereof for an injury to another boat or craft, or for a trespass of its offi- cers or crew, and in which no relief is sought beyond the subjection of the boat or vessel to the satisfaction of the plaintiff's claim, may be brought against the owners there- of without naming them, or they may be named and sum- moned as other defendants. An owner, or part owner, or person having claim or title to the boat or vessel, whether named as a defendant in the petition, and summoned, or not, may appear and make defense in the action, where it satisfactorily appears by his affidavit that he is an owner, or part owner, or has a claim or title to the boat, the nature and extent of which must be stated.

§ 74. An action to enforce a lien upon a steamboat, may be brought jointly by several persons having distinct claims for work, materials, stores, provisions, or supplies. In such cases, the statement in the petition of the claim of every plaintiff, and the verification thereof, must be separately made.

§ 75. In an action to enforce a lien, by statute, upon a steamboat for wages, work, materials, stores, or supplies, other persons having claims for any of these things, shall, upon exhibiting the same to the court by petition verified by affidavit, be made parties.

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Other persons having claims may be made parties.

CHAPTER 3.

Married women.

§ 76. Where a married woman is a party, her husband must be joined with her, except that, where the action concerns her separate property, she may sue alone; and, where the action is between herself and her husband, she may sue, or be sued, alone.

Husband must be joined with wife in action. If action is between them she may sue alone.

§ 77. If a husband and wife are sued together, the wife may defend for her own right; and if the husband neglects to defend, for his also.

If husband & wife are sued she may defend her right.

§ 78. Where a husband being a father, has deserted his family, the wife being a mother, may prosecute or defend, in his name, any action which he might have prosecuted or defended, and shall have the same powers and rights therein as he might have had.

If husband deserts his family, wife may sue or defend.

§ 79. Where a female party to an action marries, the fact being stated upon the record, the husband may be made a party with his wife, and the action shall proceed.

If female marries pending action, husband may be made party by order.

CHAPTER 4.

Infants.

§ 80. The action of an infant must be brought by his guardian, or his next friend. Any person may bring the action of an infant, as his next friend; but the court has power to dismiss it, if it is not for the benefit of the infant, or to substitute the guardian of the infant, or another person, as the next friend.

Action for infant must be brought by guardian or next friend.

§ 81. The guardian, or next friend, is liable for the costs of the action brought by him, and, where he is insolvent, the court may require him to give security for them. Either may be a witness in an action brought by him, after he has deposited in court a sum which the judge may deem sufficient to cover the costs, or, where the action is by a next friend, after the substitution of another solvent person as next friend, and an order of the court, with the consent of such person, that he shall be liable for all the costs of the action.

Guardian or next friend liable for costs. May testify by depositing costs.

§ 82. The defense of an infant must be by his regular guardian, or by a guardian appointed to defend for him, where no regular guardian appears, or where the court directs a defense by a guardian appointed for that purpose. No judgment can be rendered against an infant, until after a defense by a guardian.

Who must defend for an infant.

§ 83. The guardian to defend shall be appointed by the court, or by the judge thereof. The appointment cannot be made, until after service of the summons in the action.

Must be appointed by the court.

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Upon whose
application.

as directed in this code. No party, or attorney in an action, can be appointed guardian to defend therein, for an infant, or person of unsound mind.

§ 84. The appointment may be made upon the application of the infant, if he is of the age of fourteen years, and applies at or before the term to which the summons is served. If he is under the age of fourteen years, or does not so apply, the appointment may be made upon the application of any friend of the infant, or on that of the plaintiff in the action.

CHAPTER 5.

Persons of unsound mind, and prisoners.

Action against
persons of un-
sound mind to
be brought by
committee or
next friend.

§ 85. The action of a person judicially found to be of unsound mind, must be brought by his committee, or, if he has none, by his next friend. When brought by his next friend, the action is subject to the power of the court, in the same manner as the action of an infant so brought.

Committee li-
able for costs.
May be witness
by depositing
costs.

§ 86. The committee, or next friend, is liable for the costs, and, where he is insolvent, may be required to give security for them. Either may be rendered a competent witness in an action brought by him, in the manner provided in respect to the guardian, or next friend, of an infant.

Defense must
be by committee
or next friend.

§ 87. The defense of an action against a person judicially found to be of unsound mind, must be by his committee, or a guardian appointed by the court to defend for him, where no committee appears, or where the court directs a defense by a guardian. No judgment can be rendered against him, until after a defense by his committee, or by a guardian appointed for that purpose. No appointment can be made, until after service of the summons as directed in this code.

On whose ap-
plication ap-
pointment to be
made.

§ 88. The guardian to defend may be appointed on the application of any friend of the defendant, or on that of the plaintiff.

If party be-
come lunatic
pending the ac-
tion his commit-
tee may be join-
ed.

§ 89. Where a party is judicially found to be of unsound mind during the pendency of an action, the fact being stated on the record, if he is plaintiff, his committee may be joined with him in the action, as such. If he is defendant, the plaintiff may, upon ten days' notice thereof to his committee, have an order making the committee a defendant also.

No judgment
against prisoner
in penitentiary
without defense.

§ 90. No judgment can be rendered against a prisoner in the penitentiary, until after a defense made for him by his attorney, or, if there is none, by a person appointed by the court to defend for him.

Guardian or
attorney defend-
ing for an infant,
lunatic or per-
son of unsound
mind to be paid.

§ 91. A guardian, or attorney, appointed on the application of the plaintiff, to defend for an infant, person of unsound mind, or prisoner, shall be allowed a reasonable fee for his services, to be paid by the plaintiff, and taxed in the costs.

TITLE IV.

1851.

COMMENCEMENT OF A CIVIL ACTION.

- CHAP. 1. *Manner of commencing an action.*
2. *Service of summons.*

CHAPTER 1.

Manner of commencing an action.

§ 92. A civil action is commenced by filing, in the office of the clerk of the proper court, a petition, and causing a summons to be issued thereon.

How a civil action is commenced. By petition and summons.

To whom summons is directed.

§ 93. The summons shall be directed to the sheriff of the county, or, at the request of the plaintiff, to the jailer, coroner, or a constable, and command him to summon the defendant or defendants named therein, to answer the petition filed by the plaintiff, giving his name, at a time stated therein, under the penalty of the petition being taken for confessed, or of the defendant being proceeded against for contempt of court on his failure to do so. The summons shall be dated the day it is issued, and signed by the clerk.

§ 94. A summons shall be issued at any time, to any county, against any one or more of the defendants, at the plaintiff's request. But a summons not served, shall not be taxed in the costs, unless otherwise ordered by the court.

Summons may be issued to any county at plaintiff's request.

§ 95. With every summons, the clerk shall issue as many copies thereof as there are defendants named therein, unless otherwise ordered by the plaintiff.

One copy of summons for each defendant.

§ 96. In actions by ordinary proceedings, the time fixed in the summons, for the defendant to answer, shall be the day the summons is returnable; in actions by equitable proceedings, it shall be twenty days after the service of the summons.

When defendant to answer petition.

§ 97. The summons shall be made returnable to the first day of the next term of the court, unless that term begins within ten days from the date of the summons, when it shall be returnable to the first day of the term following.

When summons to be made returnable.

§ 98. The summons and copies shall be delivered to the sheriff, or other officer authorized to execute it.

To whom delivered.

§ 99. It shall be the duty of the sheriff, or one of his deputies, to attend at the clerk's office daily, (Sundays excepted,) to receive any process that may be issued, and the clerk shall deliver to him any process remaining in his office.

Sheriff to attend at clerk's office daily to receive process.

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CHAPTER 2.

Service of summons.

- ARTICLE 1. *Actual service.*
2. *Constructive service.*

ARTICLE 1.

Actual service.

§ 100. The summons may be served

By whom summons to be served.

1. By the officer to whom it is directed, or any officer to whom it might have been directed, whose return thereon shall be proof of the time and manner of service.

2. By any person appointed by the officer to whom the same is directed, by an indorsement on the summons, whose affidavit indorsed thereon shall be proof of the time and manner of service.

Manner of service.

§ 101. The service shall be by delivering to the defendant a copy of the summons. If he refuses to receive it, the offer of it to him shall be a sufficient service.

Time of service to be stated.

§ 102. In all cases of the return of service upon a summons by an officer, the return must state the time of the service, and that a copy was delivered to or offered and refused by the defendant. And if a return of service is defective in these respects, the officer may be fined by the court, not exceeding ten dollars, and shall be liable to the action of any person aggrieved by such defect. But the court may permit an amendment, according to the truth of the case.

May be acknowledged by indorsement on the back and witnessed.

§ 103. Service may be acknowledged by the defendant, by an indorsement upon the summons, signed and dated by him, and attested by a witness. The affidavit of the witness shall be proof of the service.

How served on a corporation.

§ 104. Where the defendant is a corporation created by the laws of this state, the service of the summons may be upon the president, mayor, chairman of the board of trustees, or other chief officer; or, if its chief officer is not found in the county, upon its cashier, treasurer, secretary, clerk, or managing agent; or, if it is a municipal corporation, upon its marshal; or, if it is an incorporated library company, upon its librarian.

May be served on officers of a branch bank.

§ 105. Where the defendant is an incorporated bank, and the action is in a county in which there is a branch thereof, the service may be upon the president or cashier of that branch.

May be served on agent of Insurance Companies.

§ 106. Where the defendant is an incorporated insurance company, and the action is in a county in which there is an agency thereof, the service may be upon the chief officer of such agency.

If a foreign corporation, on agent in this state.

§ 107. Where the defendant is a foreign corporation having an agent in this state, the service may be upon such agent.

§ 108. Where the defendant is an infant under the age of fourteen years, the service must be upon him and upon his father or guardian; or, if neither of these can be found, then upon his mother or any white person having the care or control of the infant, or with whom he lives. Where the infant is over fourteen years of age, service on him shall be sufficient.

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How served
on an infant.

§ 109. Where the defendant is a person judicially found to be of unsound mind, the service must be upon him and upon his committee; if there is no committee, upon his wife, or the person having the care of him or with whom he lives, or the keeper of the asylum in which he may be confined.

How served
on a person of
unsound mind.

§ 110. Where the defendant is a prisoner in the penitentiary, a copy of the petition must accompany the summons, and the service must be upon the keeper of the penitentiary, who shall deliver the copies of the petition and summons to the defendant. And a copy of the summons must also be delivered to the wife of the prisoner, or, if he has no wife, left at the place where he resided, or claimed to reside, prior to his confinement, with some white person of the age of sixteen years.

How served
on a prisoner in
Penitentiary.

§ 111. Where the defendant is a community of shakers holding property in common, the service must be by posting a copy of the summons at the door of its meeting house, and by delivering a copy thereof to some member of the community.

How served
on Shakers.

§ 112. Where the action is brought against the owners of a steamboat without naming them, to subject the boat to a liability by statute, the service must be upon the master, clerk, pilot, or other officer having charge of the boat, or by posting a copy of the summons in a conspicuous place on the boat.

How served
on owners of a
steamboat.

§ 113. Where a defendant is out of this state, the plaintiff may take a copy of the petition certified by the clerk, with a summons annexed thereto, warning such defendant to appear and answer the petition within sixty days after the same shall have been served on him, and cause a copy thereof to be delivered to such defendant anywhere in the United States by some person to whom he is personally known. Proof of the delivery shall be made by the affidavit of the person making it, indorsed on or annexed to the certified copy and summons, in which the time and place of the delivery and the fact that the defendant was personally known to the affiant, shall be stated. The officer before whom the affidavit is made, shall certify that the affiant is personally known by him to be worthy of credit.

How served
on a person out
of the state, and
certified.

§ 114. The certified copy and summons, with the affidavit and certificate as provided in the last section, being returned and filed in the action, shall be deemed an actual service of the summons in due time for trial at the first term commencing not less than sixty days after such service.

Effect of a ser-
vice out of the
state.

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ARTICLE 2.

Constructive service.

In what cases
may be con-
structive service

§ 115. Where it appears by the affidavit of the plaintiff, filed in the clerk's office at or after the commencement of the action, that the defendant is

1. A foreign corporation having no agent in this state, or
2. A non-resident of this state, or
3. Has departed from this state with intent to delay or defraud his creditors, or
4. Has been absent from this state four months, or
5. Has left the county of his residence to avoid the service of a summons, or
6. Conceals himself so that a summons cannot be served upon him, or

Where either of the last two mentioned facts is stated in the return, by the proper officer, of a summons against the defendant, the clerk shall make upon the petition an order warning such defendant to appear in the action on the first day of the next term of the court, which does not commence within sixty days of the time of making the order.

How service
to be made a-
gainst unknown
heirs and un-
known owners
of property.

§ 116. Where, in an action against the heirs of a deceased person as unknown heirs, or against other persons made defendants as unknown owners of any property to be divided or disposed of in the action, it appears by the petition that the names of such heirs or of any of them, or of such other persons, are unknown to the plaintiff, a warning order, as directed in the last section, shall be made by the clerk against such unknown heirs or owners.

Warning or-
der constructive
service.

§ 117. A defendant against whom a warning order has been made, shall be deemed to have been constructively summoned on the thirtieth day after the making of the order, and the action may proceed accordingly.

Actual service
may be made af-
ter warning or-
der.

§ 118. The plaintiff may, at any time before judgment, have a summons served on the defendant, if found in this state, although a warning order may have been previously entered against him; and after such service, the case shall proceed as in other cases of actual service.

TITLE V.

THE COUNTY IN WHICH AN ACTION MAY BE BROUGHT.

Certain ac-
tions must be
brought in the
county where
the property is
situated.

§ 119. Actions for the following causes, must be brought in the county in which the subject of the action, or some part thereof, is situated:

1. For the recovery of real property, or of an estate or interest therein.
2. For the partition of real property.

3. For the sale of real property under a mortgage, lien, or other incumbrance or charge.

4. For an injury to real property.

§ 120. Actions for the following causes, must be brought in the county where the cause, or some part thereof, arose :

Certain actions must be brought in the county where the cause arose.

1. An action for the recovery of a fine, penalty, or forfeiture imposed by a statute; except that, where the offense, for which the claim is made, was committed on a water course or road which is the boundary of two counties, the action may be brought in either of them.

2. An action against a public officer for an act done by him in virtue or under color of his office, or for a neglect of official duty.

3. An action upon the official bond of a public officer.

§ 121. An action to establish or set aside a will, must be brought in the county in which the will, if valid, ought, according to law, to be recorded.

Action to set aside a will to be brought in county where will ought to be recorded.

§ 122. An action to settle the estate of a deceased person, must be brought in the county in which his personal representative was qualified.

In what county action to settle an estate.

§ 123. An action for the distribution of the estate of a deceased person, or for its partition among his heirs, or for the sale of real property or slaves descended from him, must be brought in the county in which his personal representative was qualified.

For distribution, where brought.

§ 124. An action by a ward against his guardian for a settlement of his accounts, for additional security, or for his removal, must be brought in the county in which the guardian was qualified.

Where action by ward against guardian to be brought.

§ 125. An action against the commissioners of the sinking fund, or against the board of education, and the board of internal improvement of this state, must be brought in the county that includes the seat of government.

Against commissioners sinking fund, &c.

§ 126. An action, other than one of those mentioned in sections one hundred and nineteen and twenty, against a person confined in the penitentiary or a lunatic asylum, must be brought in the county in which he resided, or claimed his residence, prior to his confinement.

Against prisoner or lunatic, where brought.

§ 127. An action, other than one of those mentioned in sections one hundred and nineteen and twenty, against a corporation created by the laws of this state, may be brought in the county in which it is situated or has its principal office or place of business, or in which its chief officer resides; but if such corporation is a bank or insurance company, the action may be brought in the county in which there is a branch of the bank, or agency of the company, where it arises out of a transaction of such branch or agency.

Where action must be brought against a corporation.

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Where action
against railroad
or stage owners
to be brought.

§ 128. An action against a railroad company, or an owner of a line of mail stages or other coaches, for transporting a slave as a passenger, or for an injury to person or property upon the road or line of stages or coaches of the defendant, or upon a liability as a carrier, may be brought in any county through or into which the road or line of stages or coaches of the defendant, upon which the cause of action arose, passes.

Where against
a turnpike road
company.

§ 129. An action, other than one of those mentioned in sections one hundred and nineteen and twenty, against a turnpike road company, may be brought in any county in which any part of the road of the defendant lies.

Against a steam-
boat, wherever
found.

§ 130. An action to subject a steamboat or other vessel, upon a liability by statute, for the removal of a slave, or for an injury to another boat or craft, or for a trespass of its officers or crew, or to enforce a lien upon a steamboat for the wages of its officers or crew, or for work, materials, or supplies, may be brought in any county in which such boat or vessel may be found.

Against a non-
resident wher-
ever property or
debts may be
found

§ 131. An action, other than one of those mentioned in sections one hundred and nineteen and twenty, against a non-resident of this state, or a foreign corporation, may be brought in any county in which there may be property of or debts owing to the defendant.

In other actions,
wherever one of
defendants may
be found.

§ 132. Every other action may be brought in any county in which the defendant, or one of several defendants, resides, or is summoned.

If but one de-
fendant, service
must be on him
in county where
judgment is ren-
dered.

§ 133. Where any action embraced in the last section is against a single defendant, the plaintiff shall not be entitled to judgment against him, on the service of a summons in any other county than that in which the action is brought, unless he resided in that county at the commencement of the action, or unless, having appeared therein, he fails to object, before the trial, to its proceeding against him.

If several de-
fendants service
must be on one
in county where
judgment is ren-
dered.

§ 134. Where any action embraced in section one hundred and thirty-two, is against several defendants, the plaintiff shall not be entitled to judgment against any of them, on the service of a summons in any other county than that in which the action is brought, where no one of the defendants is summoned in that county, or resided therein at the commencement of the action, or where, if any of them resided or were summoned in that county, the action is discontinued or dismissed as to them, or judgment therein is rendered in their favor; unless the defendant summoned in another county, having appeared in the action, failed to object, before the judgment, to its proceeding against him.

Objection
waived unless
made before
judgment.

§ 135. The objection that one of several defendants was summoned in another county, if he appears, shall be deemed to be waived, unless it is made before judgment as to him.

§ 136. If, after the commencement of an action in the county of the defendant's residence, he removes therefrom, the service of a summons upon him, in any other county, shall have the same effect as if it had been made in the county from which he removed.

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If defendant removes after action is commenced. summons may go to another county.

TITLE VI.

JOINDER OF ACTIONS.

§ 137. Several causes of action may be united in the same petition, where each affects all the parties to the action, may be brought in the same county, be prosecuted by the same kind of proceedings, and all belong to only one of the following classes:

What causes of action may be joined.

1. Claims arising out of contract, express or implied.
2. Claims for the recovery of specific real property, and the rents, profits, and damages for withholding the same.
3. Claims for the recovery of specific personal property, and damages for the taking or withholding the same.
4. Claims for partition of real or personal property, or both.
5. Claims arising from injuries to character.
6. Claims arising from injuries to person and property.
7. Claims against a trustee by virtue of a contract, or by operation of law.

§ 138. The plaintiff may strike from his petition any cause of action, at any time before the final submission of the case to the jury, or to the court where the trial is by the court.

Any cause of action may be stricken out before submission of case.

§ 139. The court, at any time before the defense, shall, on motion of the defendant, strike out of the petition any cause or causes of action improperly joined with others.

Causes of action may be stricken out before defense.

§ 140. All objections to the misjoinder of causes of action, shall be deemed to be waived, unless made as provided in the last section; and all errors in the decisions of the court thereon are waived, unless excepted to at the time.

Exceptions to misjoinder waived unless made before defense.

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TITLE VII.

PLEADINGS IN CIVIL ACTIONS.

- CHAP. 1. *The pleadings in general.*
 2. *The petition.*
 3. *The demurrer.*
 4. *The answer.*
 5. *The reply.*
 6. *Time of pleading.*
 7. *General rules of pleading.*
 8. *Mistakes and amendments.*
 9. *Interrogatories.*

CHAPTER 1.

Pleadings in general.

[Pleadings.

§ 141. The pleadings are the written statements, by the parties, of the facts constituting their respective claims and defenses.

Forms heretofore existing abolished.

§ 142. The forms of pleadings in civil actions and suits, heretofore existing, are abolished; and hereafter, the forms of pleadings in civil actions, and the rules by which their sufficiency is to be determined, are those prescribed in this code.

Pleadings allowed by code.

§ 143. The only pleadings allowed, are

1. The petition by the plaintiff.
2. The demurrer, or answer, by the defendant.
3. The demurrer, or reply, by the plaintiff.

CHAPTER 2.

The Petition.

The petition and what it must contain.

§ 144. The first pleading by the plaintiff, is the petition. The petition must contain

1. The style of the court in which the action is brought.
2. The style of the action, consisting of the names of all the parties thereto, distinguishing them as plaintiffs and defendants, followed by the word "petition," if the proceedings are ordinary, and by the words "petition in equity," if the proceedings are equitable.
3. A statement in ordinary and concise language, without repetition, of the facts constituting the plaintiff's cause of action.
4. A demand of the relief to which the plaintiff considers himself entitled.

Each cause of action to be separately stated.

§ 145. Where the petition contains more than one cause of action, each shall be distinctly stated in a separate paragraph, and numbered.

CHAPTER 3.

The demurrer.

The demurrer, and grounds thereof,

§ 146. The defendant may demur to the petition, where it appears on its face, either

1. That the court has no jurisdiction of the person of the defendant, or the subject of the action; or

2. That the plaintiff has not legal capacity to sue ; or
3. That there is another action pending between the same parties, for the same cause ; or
4. That there is a defect of parties, plaintiff or defendant ; or
5. That the petition does not state facts sufficient to constitute a cause of action.

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§ 147. The demurrer shall distinctly specify the grounds of objection to the petition ; unless it does so, it shall be regarded as objecting only that the petition does not state facts sufficient to constitute a cause of action.

Must specify grounds of objection.

§ 148. If the court sustains the demurrer, the plaintiff may amend, with or without costs, as the court may order.

If demurrer is sustained, plaintiff may amend.

§ 149. When any of the matters enumerated in section one hundred and forty-six, do not appear upon the face of the petition, the objection may be taken by answer. If no such objection is taken either by demurrer or answer, the defendant shall be deemed to have waived the same, except only the objection to the jurisdiction of the court over the subject of the action, and the objection that the petition does not state facts sufficient to constitute a cause of action.

If objection not stated by demurrer or answer, is waived.

§ 150. The defendant may demur to one or more of the several causes of action alledged in the petition, and answer as to the residue.

Defendant may answer part & demur to part.

CHAPTER 4.

The answer.

§ 151. The answer shall contain

1. The style of the court and the style of the action, followed by the word "answer." But where there are several plaintiffs and defendants, it shall only be necessary to give the one first named of each class with the words "and others."

The answer, & what it must contain.

2. A denial of each allegation of the petition controverted by the defendant, or of any knowledge or information thereof sufficient to form a belief.

3. A statement of any new matter constituting a defense, counter-claim, or set-off, in ordinary and concise language, without repetition.

4. The defendant may set forth in his answer as many grounds of defense, counter-claim, and set-off, whether legal or equitable, as he shall have. Each shall be distinctly stated in a separate paragraph, and numbered. The several defenses must refer to the causes of action which they are intended to answer, in a manner by which they may be intelligibly distinguished.

§ 152. The counter-claim mentioned in this chapter must be a cause of action in favor of the defendants, or some of them, against the plaintiffs, or some of them, arising

Counter claim, and of what it consists.

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New party to
be made if ne-
cessary.

Set-off—in
what cases it
can be pleaded.

New party to
be made if ne-
cessary.

If answer in-
sufficient plain-
tiff may demur.

Guardian, com-
mittee, &c., to
file answer de-
nying allega-
tions.

The reply—in
what cases it
can be filed.

If answer con-
tains new mat-
ter, plaintiff may
reply.

If reply in-
sufficient, de-
fendant may de-
mur.

When defense
must be filed.

out of the contract or transactions set forth in the petition, as the foundation of the plaintiff's claim, or connected with the subject of the action.

§ 153. When it appears that a new party is necessary to a final decision upon the counter-claim, the court may either permit the new party to be made, by a summons, to reply to the counter-claim in the answer, or may direct that it be stricken out of the answer, and made the subject of a separate action.

§ 154. A set-off can only be pleaded in an action founded on contract, and must be a cause of action arising upon contract, or ascertained by the decision of a court.

§ 155. Where it appears that a new party is necessary to a final decision upon the set-off, the court shall permit the new party to be made, if it also appears that, owing to the insolvency or non-residence of the plaintiff, or other cause, the defendant will be in danger of losing his claim unless permitted to use it as a set-off.

§ 156. Where the facts stated in answer are not sufficient to constitute a defense, counter-claim, or set-off, the plaintiff may demur.

§ 157. It shall be the duty of the guardian of an infant, or committee of a person of unsound mind, or attorney appointed for a prisoner, to file an answer denying the material allegations of the petition prejudicial to such defendant.

CHAPTER 5.

The reply.

§ 158. There shall be no reply, except upon the allegation of a counter-claim or set-off in the answer.

§ 159. When the answer contains new matter constituting a counter-claim or set-off, the plaintiff may reply to such new matter, denying each allegation controverted by him, or any knowledge or information thereof sufficient to form a belief, and may alledge in concise language any new matter not inconsistent with the petition, constituting a defense to the counter-claim or set-off.

§ 160. Where the facts stated in the reply do not amount to a sufficient defense, the defendant may demur.

CHAPTER 6.

Time of pleading.

§ 161. The defense to an action prosecuted by ordinary proceedings, must be filed on the day of the term on which the case is set for trial—

1. Where the summons has been served ten days before the commencement of the term, in the county in which the action is brought, or in an adjoining county ;

2. Where it has been served twenty days, elsewhere in the state, or sixty days out of the state ; or

3. Where the defendant has been constructively summoned thirty days.

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§ 162. The reply shall be filed on or before the calling of the cause for trial.

When reply to be filed.

§ 163. In an action prosecuted by equitable proceedings, the defense must be filed on the third day of the term—

When defense to be filed in equitable proceedings.

1. Where the summons has been served twenty days before the commencement of the term, in the county in which the action is brought, or an adjoining county;

2. Where it has been served thirty days, elsewhere in the state, or sixty days out of the state; or

3. Where the defendant has been constructively summoned thirty days.

§ 164. Where the service of the summons was before the commencement of the term, but not the length of the time mentioned in the last section, the defense shall be filed in thirty days after the service.

Defense to be filed in thirty days if served before commencement of term.

§ 165. If the answer, in equitable proceedings, contains a counter-claim or set-off, the plaintiff shall reply within twenty days after the answer is filed, or ninety days before the ensuing term.

When reply to be filed to set-off or counterclaim.

§ 166. The court may, for good cause shown, extend the time for filing an answer or reply, to some subsequent day in that or the next succeeding term; the party applying for the delay paying the costs occasioned thereby.

Time of filing pleading may be extended.

§ 167. The filing of an answer or reply in the clerk's office in vacation, within the time allowed, with notice thereof to the opposite party, or his attorney, shall be equivalent to a filing in court.

Filing in clerk's office with notice sufficient.

CHAPTER 7.

General rules of pleading.

§ 168. Every pleading must be subscribed by the party, or his attorney, and the petition, answer, and reply must each be verified by the affidavit of the party, to the effect that he believes the statements thereof to be true. No pleading verified as herein required, shall be used against the party, in any criminal prosecution, or action, or proceeding for a penalty or forfeiture, as proof of a fact admitted or alledged in such pleading; and such verification shall not make other or greater proof necessary on the side of the adverse party.

Pleadings to be verified by oath of party.

§ 169. The verification by affidavit mentioned in the last section, shall not be required to the answer of a guardian or committee defending for an infant, or person of unsound mind or imprisoned; nor in any case where the admission of the truth of the allegations of the petition or answer might subject the party to a criminal or penal prosecution; nor to pleadings affecting injuries to person or character.

Certain pleadings not to be verified.

1851.

Presumptions of law need not be stated.

Notes and accounts must be filed with pleadings.

Pleadings to be liberally construed.

Irrelevant matter may be stricken out.

Facts conferring jurisdiction on court need not be stated.

Performance of conditions precedent need not be specially stated.

Extrinsic facts need not be stated in action of slander.

Defendant may allege truths of the matter, and mitigating circumstances.

Real property must be described in petition.

§ 170 Neither presumptions of law, nor matters of which judicial notice is taken, need be stated in a pleading.

§ 171. If the action, counter-claim, or set-off, is founded on a note, bond, bill, or other writing, as evidence of indebtedness, it must be filed as a part of the pleading, if in the power of the party to produce it. If not filed, the reason thereof must be stated in the pleading. If upon an account, a copy thereof must, in like manner, be filed with the pleading.

§ 172. In the construction of a pleading for the purpose of determining its effect, its allegations shall be liberally construed, with a view to substantial justice between the parties.

§ 173. If irrelevant or redundant matter is inserted in a pleading, it may be stricken out, on motion of any person aggrieved thereby, at the cost of the party whose pleading contained it.

§ 174. In pleading a judgment, or other determination, of a court or officer of special jurisdiction, it shall not be necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation is made in a petition, and is not controverted in the answer, or made in the answer in relation to a counter-claim or set-off, and is not controverted in the reply, it need not be proved on the trial.

§ 175. In pleading the performance of a condition precedent in a contract, it shall not be necessary to state the facts showing such performance, but it may be stated, generally, that the party duly performed all the conditions on his part; and if such allegation is not controverted as stated in the last section in regard to judgments, it shall not be necessary to prove it on trial.

§ 176. In an action for libel or slander, it shall not be necessary to state in the petition any extrinsic facts, for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose; but it shall be sufficient to state, generally, that the same was published or spoken concerning the plaintiff; and if such allegation is not controverted as stated in section one hundred and seventy-four in regard to judgments, it shall not be necessary to prove it on the trial.

§ 177. In the actions mentioned in the last section, the defendant may, in his answer, alledge both the truth of the matter charged as defamatory and any mitigating circumstances legally admissible in evidence, to reduce the amount of damages; and whether he proves the justification or not, he may give in evidence the mitigating circumstances.

§ 178. In an action for the recovery of real property, it must be described in the petition with such convenient certainty, as to enable an officer holding an execution to identify it.

1851.

Every material allegation not controverted to be taken as true.

What is a material allegation

Deeds or other writings relied upon must be filed.

Variance in pleading not material, unless the adverse party has been misled.

Fact to be found according to evidence, and amendment made.

If claim or defense is unproved.—failure of proof.

Plaintiff may amend petition at any time before answer.

§ 179. Every material allegation of the petition not specifically controverted by the answer, and every material allegation of new matter in the answer, constituting a counter-claim or set-off, not specifically controverted by the reply, must, for the purposes of the action, be taken as true. But the allegation of new matter in the answer, not relating to a counter-claim or set-off, or of new matter in a reply, is to be deemed controverted by the adverse party as upon a direct denial or avoidance, as the case may require. Allegations of value, or of amount of damage, shall not be considered as true, by the failure to controvert them.

§ 180. A material allegation in a pleading, is one essential to the claim or defense, and which could not be stricken from the pleading without leaving it insufficient.

§ 181. If either party shall rely upon any deed, or other writing, he shall file with his pleading the original deed or writing, if in his power. If he cannot produce such deed or writing, he shall so state in his pleading, together with the reasons therefor; and if such reasons are sufficient, he may file the best evidence of the contents of such deed or writing in his power. Original deeds, and other writings, filed by either party as above provided, shall remain on file for the inspection of the other party, until allowed by the court to be withdrawn; and in such case, copies, attested by the clerk, shall be substituted by the party withdrawing the originals.

CHAPTER 8.

Mistakes in pleading, and amendments.

§ 182. No variance between the allegation in a pleading and the proof, is to be deemed material, unless it has actually misled the adverse party to his prejudice, in maintaining his action or defense upon the merits. Whenever it is alleged that a party has been so misled, that fact must be shown to the satisfaction of the court, and it must also be shown in what respect he has been misled; and, thereupon, the court may order the pleading to be amended, upon such terms as may be just.

§ 183. Where the variance is not material as provided in the last section, the court may direct the fact to be found according to the evidence, and may order an immediate amendment without costs.

§ 184. Where, however, the allegation of the claim or defense to which the proof is directed, is unproved, not in some particular or particulars only, but in its general scope and meaning, it is not to be deemed a case of variance within the last two sections, but a failure of proof.

§ 185. The plaintiff may amend his petition without leave, at any time before an answer is filed, and without prejudice to the proceedings already had.

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Party may reply after his demurrer is overruled.

Court may authorize amendments of pleadings at any time.

§ 186. Upon a demurrer being overruled, the party demurring may answer or reply

§ 187. The court may, at any time, in furtherance of justice, and on such terms as may be proper, amend any pleading or proceeding, by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect, or by inserting other allegations material to the case, or, when the amendment does not change substantially the claim or defense, by conforming the pleading or proceeding to the facts proved. The court may likewise, in its discretion, allow an answer or reply to be made, after the time limited by this code, or, by an order, enlarge such time. And whenever any proceeding taken by a party fails to conform in any respect to the provisions of this code, the court may permit an amendment of such proceeding, so as to make it conformable thereto. And when the allegations of a pleading are so indefinite or uncertain that the precise nature of the claim or defense is not apparent, the court may require the pleading to be made definite and certain by amendment. The court must, in every stage of an action, disregard any error or defect in the proceedings which does not affect the substantial rights of the adverse party; and no judgment shall be reversed or affected by reason of such error or defect.

Parties may file supplemental pleadings.

§ 188. The plaintiff and defendant, respectively, may be allowed, on motion, to make a supplemental complaint, answer, or reply, alleging facts material to the case, occurring after the filing of the former petition, answer, or reply.

If pleadings are amended, case may be continued.

§ 189. When either party shall amend any pleading or proceeding, and the court shall be satisfied, by affidavit or otherwise, that the adverse party could not be ready for trial in consequence thereof, a continuance may be granted to some day in the same term, or to another term of the court.

CHAPTER 9.

Interrogatories.

Interrogatories may be annexed to equitable proceedings.

§ 190. In actions by equitable proceedings, either party may annex to his petition, answer, or reply, written interrogatories to any one or more of the adverse parties, concerning any of the material matters in issue in the action. The answers to which, on oath, may be read by either party, as a deposition between the party interrogating and the party answering.

Party answering interrogatories may state new matter.

§ 191. The party answering shall not be confined to responding merely to the interrogatories, but may state any new matter concerning the same cause of action, which shall likewise be read as a deposition.

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When interrogatories are to be answered.

Interrogatories may be annexed to pleadings by ordinary proceedings.

When to be answered.

Trial in action not to be postponed for failure to answer interrogatories.

Provisions in § 191 to apply to ordinary proceedings.

Answer to interrogatories must distinguish between knowledge and information.

Answer to be verified by oath.

Adverse party may be summoned to testify if in the same or adjoining county.

§ 192. Where the interrogatories are annexed to the petition, they shall be answered at the same time the party is required to answer the petition; where annexed to the answer or reply, then in twenty days after notice shall be given thereof to the adverse party or his attorney; but if answered twenty days before the term at which the action stands regularly for trial, the action shall not be postponed on account of their not being sooner answered.

§ 193. In actions by ordinary proceedings, either party may, in like manner, annex written interrogatories to any one or more of the adverse parties to his petition, answer, or reply, concerning any material matter in issue in the action, in the following cases:

1. Where the party interrogated does not reside in the same or an adjoining county.

2. Where the party interrogated is unable to attend court on account of age, infirmity, or imprisonment, or is a female.

§ 194. Where the interrogatories, in an action by ordinary proceedings, are annexed to the petition, they shall be answered at the same time the petition is required to be answered; where annexed to the answer or reply, at or before the calling of the cause for trial, where the party interrogated had reasonable notice of their being filled.

§ 195. The trial of an action by ordinary proceedings, shall not be postponed on account of the failure to answer the interrogatories, if the party interrogated is present in court at the trial, so that he may be orally examined; nor, in case of his absence, without an affidavit showing the facts the party believes will be proved by the answers thereto, and that the party has not filed the interrogatories, nor omitted to file them, for the purpose of delay. Whereupon, if the party will consent that the facts stated in the affidavit shall be considered as admitted by those interrogated, the trial shall not be postponed for that cause.

§ 196. The provisions in section one hundred and ninety-one shall apply to the answers to interrogatories in actions by ordinary proceedings.

§ 197. The party, in answering such interrogatories, shall distinguish clearly between what is stated from his personal knowledge, and what is stated from information or belief merely. An unqualified statement of a fact, shall be considered as made of his personal knowledge.

§ 198. The answers to the interrogatories shall be verified by the affidavit of the party answering, to the effect that the statements in them made of his own personal knowledge are true, and those made from the information of others, he believes to be true.

§ 199. When the party resides in the same or an adjoining county, he may be summoned by the adverse party, and compelled to testify on the trial of an action by ordinary proceedings, as any other witness.

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TITLE VIII.

PROVISIONAL REMEDIES.

CHAP. 1. *Arrest and bail.*

2. *Claim and delivery of personal property.*
3. *Attachment.*
4. *Injunction.*
5. *Receivers.*
6. *Deposit in court.*

CHAPTER 1.

*Arrest and bail.*ART. 1. *When and how an order of arrest may be obtained.*

2. *Proceedings upon an order of arrest.*
3. *Liability and discharge of bail, and of officer.*
4. *Motion to vacate an order of arrest.*

ARTICLE I.

When and how an order of arrest may be obtained.

Defendant may
be held to bail.

§ 200. A defendant in a civil action, can be arrested and held to bail, only upon the conditions and in the manner prescribed in this chapter.

By whom or-
der of arrest may
be made.

§ 201. An order for the arrest of the defendant, shall be made by the clerk of the court in which the action is brought, at its commencement or at any time before judgment, when there is filed in his office an affidavit of the plaintiff, showing

1. The nature of the plaintiff's claim.
2. That it is just.
3. The amount or value, which the affiant believes the plaintiff ought to recover.

4. That the affiant believes, either that the defendant is about to depart from this state, and, with intent to defraud his creditors, has concealed, or removed from this state, his property, or so much thereof, that the process of the court after judgment cannot be executed; or that the defendant has money, or securities for money, or evidences of debt, in the possession of himself, or of others for his use, and is about to depart from this state, without leaving property therein sufficient to satisfy the plaintiff's claim.

Not to be is-
sued unless bond
with surety is
given.

§ 202. The order of arrest shall not be issued by the clerk, until there has been executed in his office by one or more sufficient sureties of the plaintiff, a bond to the effect that the plaintiff shall pay to the defendant all damages which he may sustain by reason of the arrest, if the order is wrongfully obtained, not exceeding double the amount of the plaintiff's claim stated in the affidavit.

To whom or-
der of arrest to
be delivered.

§ 203. The order of arrest shall be addressed and delivered, with a copy thereof, to the sheriff. It shall state the names of the parties to the action, the court in which the action is brought, and the amount of the plaintiff's claim specified in the affidavit, and shall require the sheriff to arrest the defendant and hold him to bail in the sum of the

plaintiff's claim, with the probable costs of the action, not exceeding twenty-five dollars, and to make return of the order on a day to be named therein, with the bail bond, if any is taken.

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§ 204. The return day of the order of arrest, when issued at the commencement of the action, shall be the same as that of the summons; when issued afterwards, it may be another day in term, at the option of the plaintiff.

When order of arrest to be made returnable.

ARTICLE II.

Proceedings upon an order of arrest.

§ 205. The sheriff shall execute the order of arrest, by arresting the defendant and delivering to him a copy thereof.

How executed.

§ 206. The defendant, when arrested, shall be committed by the sheriff to the jail of his county, a copy of the order of arrest being delivered to the jailer; and, unless bailed, kept in custody in the manner provided by law in the case of a defendant taken in execution upon a judgment in a civil action, until discharged in the mode and upon the conditions such defendant may be.

What disposition to be made of the person of defendant.

§ 207. The defendant may, before or after giving bail, deposit in the hands of the sheriff, or in court, the amount of money mentioned in the order of arrest; whereupon he shall be discharged, or his bail, if any is given, shall be released.

Defendant may deposit amount of claim and be discharged.

§ 208. The sheriff shall pay into the court the money received by him, in vacation, in lieu of bail, on the first day of the next term. Where it is received during a term, he shall pay it into the court immediately.

The sheriff shall pay into court all deposits.

§ 209. The court shall make proper orders for the safe-keeping of money deposited in lieu of bail. It may direct the sheriff to keep the money, and, after final judgment in the action, shall order it to be paid to the party entitled thereto, according to the result.

Court to make proper orders for keeping the money.

§ 210. Money deposited in the hands of the sheriff in lieu of bail, or directed by the court to be kept by him, shall be held upon his official responsibility; and he and his sureties shall be liable, and may be proceeded against, for any default in relation thereto, as in other cases of delinquency.

Sheriff and sureties liable for moneys deposited with him, in bail cases.

§ 211. Bail may be given by the defendant on his arrest, or at any time afterwards before judgment. It shall be done by causing one or more sufficient bail to execute a bond to the plaintiff in the presence of the sheriff, or of the jailer where the defendant has been committed to jail, to the effect that, if judgment shall be rendered in the action against the defendant, he will render himself amenable to the process of the court thereupon. The bond, when accepted, shall be returned to the clerk's office, and the defendant discharged.

Defendant may give bail by executing bond, with surety.

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Qualification
of bail.

§ 212. The bail must be a resident of this state, and be worth double the sum specified in the order of arrest, beyond the amount of his debts, and have property in this state, subject to execution, at least equal in value to that sum. If two or more become bail, they must, in the aggregate, possess the same qualifications. The bail, if it is required by the sheriff, shall make affidavit of their qualification before him.

Plaintiff may
object to bail—
proceedings
thereon.

§ 213. If the plaintiff objects to the bail for insufficiency, he may move his objections in court, during the term at which the bail bond is returned, and not afterwards, except where the bond is returned within the last three days of the term; in which case, the motion may be made on the first day of the succeeding term. The motion cannot be made, unless the plaintiff has given to the sheriff, or to the jailer where the bond was taken by him, notice thereof. And if the notice is adjudged unreasonable, the court may continue the motion to some day in the same or the succeeding term.

Officer not li-
able if no mo-
tion is made, or
bail is not ad-
judged insuffi-
cient.

§ 214. If the motion is not made, or the bail is not thereupon adjudged insufficient, the officer shall be exonerated from liability by reason of the insufficiency of the bail.

Bail adjudged
insufficient not
released.

§ 215. The bail adjudged insufficient, shall not be thereby released, but an order shall forthwith be made to re-arrest the defendant; and, thereupon, the same proceedings may be had, and with the like effect, as are directed upon an order of arrest.

Execution may
be issued against
the body, but de-
fendant may
take oath of in-
solvency.

§ 216. Upon judgments in actions in which the defendant has been arrested and held to bail, and in which the order of arrest has not been vacated, an execution against the body of the defendant may be issued, upon which the same proceedings shall be had, and the defendant shall be dealt with in the same manner, as provided by law in the civil actions in which executions may be issued against the body of the defendant; except that the oath of insolvency, upon reasonable notice, may be taken at any time after the arrest, by delivering to the plaintiff, his agent or attorney, a schedule of the property intended to be surrendered, although said schedule may not have been delivered ten days before the taking of such oath. This exception shall also apply to section 206 of this code.

ARTICLE 3.

Liability and discharge of bail, and of officer.

Bail may sur-
render defend-
ant and be dis-
charged.

§ 217. A surrender of the defendant to the sheriff of the county in which he was arrested, with a delivery to him of a copy of the order of arrest and of the bail bond by the defendant himself, or by his bail, at any time before the liability of the bail is fixed, shall discharge the bail. The sheriff shall give to the bail a written acknowledgment of the surrender, and commit the defendant to the jail of his

county with his order indorsed upon the copy of the bail bond delivered to the jailer.

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§ 218. For the purpose of surrendering the defendant, the bail may, at any time or place, arrest him, or authorize, in writing indorsed upon a copy of the order of arrest and bail bond, the sheriff or any constable to do so.

The bail may arrest defendant, or cause officer to do it.

§ 219. A return of "not found" upon an execution against the body of the defendant, placed in the hands of the sheriff of the county in which he was arrested, within twenty days after it might have issued upon the judgment, shall be necessary to fix the liability of the bail, which shall be, to pay the amount of the judgment and costs.

A return of not found necessary to fix bail.

§ 220. The bail can be proceeded against, in a separate action only.

Bail may be sued in a separate action.

§ 221. He will be exonerated by the death of the defendant, or his removal from this state under process of law as a fugitive, before the return day of the summons served upon the bail in the action to enforce his liability, or by the imprisonment of the defendant in the penitentiary, or his legal discharge from the obligation to render himself amenable to the process of the court, or by his surrender, to the sheriff of the county in which he was arrested in execution thereof, by the return day of the summons in the action against the bail, or within such further time as the court, in which the action is pending, may allow. If the defendant is confined in any jail of this state, the bail will be exonerated by delivering to the jailer thereof, at any time before the return day of the summons in the action against the bail, a certified copy of the order of arrest and of the bail bond, with a written order thereupon to detain the defendant in custody until discharged by law from the action in which the bond was given. The jailer shall give a written acknowledgment of the receipt of the order, which shall be filed with the original bond.

For what causes bail may be exonerated.

§ 222. If, after being arrested, the defendant escapes or is rescued, or bail is not taken or is adjudged insufficient, or a deposit is not made, the sheriff shall be liable as bail, unless he had committed the defendant to jail and obtained a written acknowledgment thereof from the jailer; in which case, the jailer shall be so liable. Either officer may discharge himself from such liability, by putting in sufficient bail at any time before judgment.

For what causes sheriff liable.

§ 223. The liability of the officer as bail, shall be fixed in the manner provided in section two hundred and nineteen, and can be enforced only in a separate action against him, or against him and his sureties in his official bond, as in other cases of delinquency.

Liability of officer fixed in manner provided in § 219.

§ 224. The bail adjudged insufficient, shall be liable to the officer for the damages he may sustain by reason of such insufficiency.

The bail adjudged insufficient liable to the officer.

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ARTICLE IV.

Motion to vacate an order of arrest.

Defendant may move to vacate order of arrest, or reduce bail.

§ 225. A defendant against whom an order of arrest has been obtained, may, at any time before judgment in the action, and before a decision of a motion on account of the insufficiency of the bail, apply to the court, or, in vacation and before executing a bail bond, to the judge thereof, or to any circuit judge, or to the presiding judge of the county court, by motion, to vacate the order of arrest, or to reduce the amount of bail. Reasonable notice of the motion shall be given to the plaintiff. If satisfied that the bail ought not to have been required, or that the sum for which it was demanded is too large, the court or judge may vacate the order of arrest, or reduce the amount of bail. The decision of the motion shall be final in the action, but shall not affect the rights of the parties in any other action. Upon the vacation of the order of arrest, the defendant shall be discharged, or the bail bond, if any is given, shall be cancelled.

Motion may be supported or opposed by affidavits.

Writ of *scire facias* against bail abolished.

§ 226. If the motion is supported by affidavits or other evidence out of the record, the plaintiff may oppose it by affidavits or other evidence, in addition to that on which the order of arrest was obtained.

§ 227. The writ of *scire facias* against bail, is abolished.

CHAPTER 2.

Claim and delivery of personal property.

Plaintiff in action for the recovery of personal property may have a delivery of it.

How and for what causes an order for delivery may be made.

§ 228. The plaintiff in an action to recover the possession of specific personal property, may, at the commencement of the action, or at any time before judgment, claim the immediate delivery of the property, as herein provided.

§ 229. An order for the delivery of property to the plaintiff, shall be made by the clerk, when there is filed in his office an affidavit of the plaintiff, showing

1. A particular description of property claimed.
2. Its actual value, and the damages which the affiant believes the plaintiff ought to recover for the detention thereof.
3. That the plaintiff is the owner of the property, or has a special ownership or interest therein, stating the facts in relation thereto, and that he is entitled to the immediate possession of the property.
4. That the property is wrongfully detained by the defendant.
5. That it has not been taken for a tax or fine against the plaintiff, or under any order or judgment of a court against him, or seized under an execution or attachment against his property, or, if so seized, that it is, by statute, exempt from such seizure.
6. That the plaintiff's cause of action has accrued within one year.

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Where the action is brought to recover property taken under an execution or distress warrant, the affidavit must state the fact of the taking and the nature of the process under which it was done.

§ 230. Where the delivery of several articles of property is claimed, the affidavit must state the value of each.

Affidavit must state the value of each article.

§ 231. The order for the delivery of the property to the plaintiff shall be addressed and delivered with a copy thereof to the sheriff. It shall state the names of the parties to the action and the court in which the action is brought, and direct the sheriff to take the property, describing it and stating its value as in the affidavit of the plaintiff, and deliver it to him, and to make return of the order on a day to be named therein. The order shall be made returnable, as an order of arrest is directed to be returned.

To whom an order for delivery of property may be addressed, and how executed.

§ 232. The order shall not be complied with by the sheriff, until there has been executed in his presence, by one or more sufficient sureties of the plaintiff, a bond to the defendant to the effect that the plaintiff shall duly prosecute the action, and that he shall perform the judgment of the court therein, by returning the property, if a return thereof shall be adjudged, and by paying such sums of money as may be adjudged against him in the action, not exceeding double the value of the property, and the costs of the action.

Delivery not to be made unless plaintiff executes a bond.

§ 233. Where the action is brought against a sheriff, or other officer, to recover the possession of property taken by him under an execution against a person other than the plaintiff, or under a distress warrant, the bond provided for in the last section shall be to the effect that the plaintiff shall duly prosecute the action, and that he shall perform the judgment of the court therein, by returning the property, if a return thereof shall be adjudged, and by paying to the defendant, or to the plaintiff in the execution or party who sued out the distress warrant, as may be directed by the court, such sums of money as may be adjudged against the plaintiff in the action not exceeding double the value of the property, and the costs of the action.

Requisites of bond to be executed when action is against sheriff or other officer.

§ 234. The sheriff shall execute the order by taking the property therein mentioned, if it is found in the possession of the defendant or of his agent, or of any other person who obtained possession thereof from the defendant directly or indirectly after the order was placed in the sheriff's hands. He shall also deliver a copy of the order to the defendant, or to the person from whose possession the property is taken, or, if neither can be found, leave it at the usual place of abode of either, with some white person of the age of sixteen years.

How the order for the delivery of property is to be executed.

§ 235. If the affidavit of the plaintiff states that the property was taken under an execution or distress warrant, the sheriff shall deliver it to the plaintiff. In every other case,

If property has been taken under execution, delivery must be to plaintiff.

1851.

Property to be delivered to defendant if plaintiff fails to give bond.

Either party may have property valued before bond is given.

Expenses of keeping property to be taxed in bill of costs.

Proceedings where the property is claimed by a stranger.

Order may, at any time before judgment, be issued to another county.

If the property is concealed, defendant may be punished therefor.

he shall retain the property in his possession for two days, unless the bond mentioned in the succeeding section shall be sooner executed.

§ 236. Within two days after the taking of the property by the sheriff, the defendant, or any one for him, may, in the case in which the property was not taken under an execution or a distress warrant, cause a bond to be executed to the plaintiff, in the presence of the sheriff, by one or more sufficient sureties, in double the value of the property, to the effect that the defendant shall perform the judgment of the court in the action; whereupon, the sheriff shall restore the property to the defendant, or to the person in whose possession it was found. If such bond is not executed within the time above limited, the sheriff shall deliver the property to the plaintiff. He shall return the bonds with the order.

§ 237. Before taking any bond, the sheriff shall, upon the suggestion of either party that the value of the property is not truly stated in the order for its delivery, and, where the suggestion is on the part of the defendant, on his producing the property to the sheriff, select three disinterested housekeepers, to appraise the same under oath to be administered by him; whose appraisement indorsed upon the order, shall be regarded as the value of the property, in taking the bonds.

§ 238. The sheriff shall safely keep the property, and shall be allowed by the court the necessary expenses of doing so, to be paid by the plaintiff, and taxed in the costs.

§ 239. If another person than the defendant or his agent, claims the property taken by the sheriff, and delivers to the sheriff his affidavit that he is entitled to the possession thereof, the sheriff shall not be bound to keep it, or deliver it to the plaintiff, unless he shall, within two days after the delivery to him, or to his agent or attorney, by the sheriff, of a copy of the affidavit, indemnify the sheriff against the claim, by a bond executed by one or more sufficient sureties, in double the value of the property. No claim to such property by any other person than the defendant or his agent, shall be valid against the sheriff, unless so made. He shall return the affidavit of the claimant, with his proceedings thereon to the clerk's office.

§ 240. An order may, at any time before judgment, be directed to any other county for the delivery of the property claimed. And several orders may issue at the same time, or successively, at the option of the plaintiff. But only one of them shall be taxed in the costs, unless otherwise ordered by the court.

§ 241. Where it appears by the affidavit of the plaintiff, or by the return of the order of delivery, that the property claimed has been disposed of or concealed, so that the order cannot be executed, the court may compel the attend-

ance of the defendant, examine him on oath as to the situation of the property, and punish a disobedience of its orders in this respect as in cases of contempt.

1851.

CHAPTER 3.

Attachment.

ARTICLE 1. *General Attachments.*

2. *Attachments in certain actions.*
3. *Attachments against specific property.*
4. *Discharge and reinstatement of attachments.*

ARTICLE I.

General attachments.

SUBDIVISION 1. *Grounds of attachment.*

2. *How an attachment is obtained.*
3. *Execution and return of attachment.*
4. *Disposition of attached property.*
5. *Proceedings upon attachments.*

SUBDIVISION I.

Grounds of attachment.

§ 242. The plaintiff in a civil action, may, at or after the commencement thereof, have an attachment against the property of the defendant, in the cases and upon the grounds hereinafter stated, as a security for the satisfaction of such judgment as may be recovered:

Plaintiff in civil action may have an attachment upon certain grounds.

First. In an action for the recovery of money where the action is against

1. A defendant or several defendants, who, or some one of whom, is a foreign corporation, or a non-resident of this state; or

2. Who has been absent therefrom four months; or

3. Has departed from this state with intent to defraud his creditors; or

4. Has left the county of his residence, to avoid the service of a summons; or

5. So conceals himself that a summons can not be served upon him; or

6. Is about to remove his property, or a material part thereof, out of this state, not leaving enough therein to satisfy the plaintiff's claim; or

7. Has sold, conveyed, or otherwise disposed of his property, or suffered or permitted it to be sold, with the fraudulent intent to cheat, hinder, or delay his creditors; or

8. Is about to sell, convey, or otherwise dispose of his property, with such intent.

But an attachment shall not be granted on the ground that the defendant or defendants, or any of them, is a foreign corporation, or a non-resident of this state, for any claim other than a debt or demand arising upon contract.

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Secondly. In an action to recover the possession of personal property, where it has been ordered to be delivered to the plaintiff, and where the property, or part thereof, has been disposed of, concealed, or removed, so that the order for its delivery cannot be executed by the sheriff.

SUBDIVISION II.

How an attachment is obtained.

Steps necessary to obtain an attachment.

§ 243. An order of attachment shall be made by the clerk of the court in which the action is brought, in any case mentioned in the first subdivision of section two hundred and forty-two, when there is filed in his office an affidavit of the plaintiff, showing

1. The nature of the plaintiff's claim.
2. That it is just.
3. The amount which the affiant believes the plaintiff ought to recover; and
4. The existence in the action of some one of the grounds for an attachment enumerated in that subdivision; and in the case mentioned in the second subdivision of section two hundred and forty-two, where it is shown, by such affidavit or by the return of the sheriff upon the order for the delivery of the property claimed, that the facts mentioned in that subdivision exist.

Absence or concealment authorizes an attachment.

§ 244. Where the return by the proper officer upon a summons against a defendant, states that he has left the county to avoid the service of the summons, or has concealed himself therein for that purpose, it shall be equivalent to the statement of the fact in the affidavit mentioned in the last section.

No attachment to be issued unless plaintiff executes bond, with surety.

§ 245. The order of attachment shall not be issued by the clerk, until there has been executed in his office by one or more sufficient sureties of the plaintiff, a bond to the effect that the plaintiff shall pay to the defendant all damages which he may sustain by reason of the attachment, if the order is wrongfully obtained, not exceeding double the amount of the plaintiff's claim.

How and by whom order of attachment to be executed.

§ 246. The order of attachment shall be directed and delivered to the sheriff, with as many copies thereof as the plaintiff may direct. It shall require him to attach and safely keep the property of the defendant in his county not exempt from execution, or so much thereof as will satisfy the plaintiff's claim specified in his affidavit, which shall be stated in the order, and the probable costs of the action not exceeding thirty dollars; also to summon the garnishees to answer in the action on the return day of the order, and to make due return thereof. The order shall be made returnable as an order of arrest is directed to be returned.

§ 247. Orders of attachment may be issued to the sheriffs of other counties; and several of them may, at the option of the plaintiff, be issued at the same time, or in succession. But such only as have been executed in whole or in part, shall be taxed in the costs, unless otherwise directed by the court.

1851.

Orders of attachment may be issued to several counties.

SUBDIVISION III.

Execution and return of attachment.

§ 248. Where there are several orders of attachment against the same defendant, they shall be executed in the order in which they were received by the sheriff.

When several against same defendant to be executed in the order received.

§ 249. The order of attachment shall be executed by the sheriff without delay, in the following manner:

The manner of executing an attachment.

1. Upon real property, by leaving with the occupant thereof, or if there is no occupant, in a conspicuous place thereon, a copy of the order.

2. Upon personal property capable of manual delivery, by taking it into his custody, and holding it subject to the order of the court.

3. Upon other personal property, by delivering a copy of the order, with a notice specifying the property attached, to the person holding the same; or as to a debt or demand, to the person owing it; or as to stock in a corporation, or property held, or a debt or demand owing by it, to the chief officer, or to the secretary, cashier, treasurer, or managing agent thereof, and by summoning the person or corporation to answer as a garnishee in the action. The sheriff shall deliver copies to and summon such persons as garnishees, as the plaintiff may direct.

§ 250. It shall be the duty of every person mentioned in the third subdivision of the last section, to whom the sheriff shall apply therefor, to furnish him with a certificate of the number of shares of the defendant in the stock of the corporation, or a description of the property held by such corporation or person, belonging to or for the benefit of the defendant, or the amount of the debt owing to the defendant by such corporation or person, whether due or not; and a failure to perform this duty may be punished by the court as a contempt.

Secretary, cashier, &c., of corporation to furnish sheriff with certificate of shares, &c.

§ 251. The defendant's personal property, other than slaves, shall be first taken under an attachment; if enough thereof is not found, then his slaves, and lastly, his real property.

Personal property to be first taken, next slaves, & lastly real property.

§ 252. Where the property to be attached is a fund in court, the execution of the order of attachment shall be, by leaving with the clerk of the court a copy thereof, with a notice specifying the fund; and where several orders of attachment are executed upon such fund on the same day, they shall be satisfied out of it ratably.

If attachment be against a fund in court, copy to be delivered to clerk.

1851.

Plaintiff must execute bond before personal property is taken under attachment.

Order of attachment creates a lien like an execution.

If property is removed to another county, sheriff may pursue it to another county within twenty-four hours.

Sheriff may deliver property to person in whose possession found, upon execution of a bond.

Property thus delivered to be first appraised.

That property was not subject, no defense to a bond.

Manner of return to be made by sheriff on attachment.

§ 253. The sheriff shall not, in executing an order of attachment upon personal property held by the defendant jointly or in common with another person, take possession of such property, until there has been executed a bond to such other person, by one or more sufficient sureties of the plaintiff, to the effect that he shall pay to such person the damages he may sustain by the wrongful suing out of the order, not exceeding double the amount of the plaintiff's claim.

§ 254. An order of attachment binds the defendant's property in the county which might be seized under an execution against him, from the time of the delivery of the order to the sheriff, in the same manner as an execution would bind it; and the lien of the plaintiff is completed upon any property or demand of the defendant, by executing the order upon it in the manner directed in this article.

§ 255. If, after an order of attachment has been placed in the hands of the sheriff, any property of the defendant is removed from the county, the sheriff may pursue and attach the same in another county, within twenty-four hours after the removal.

§ 256. The sheriff may deliver any attached property to the person in whose possession it was found, upon the execution, in the presence of the sheriff, of a bond to the plaintiff, by such person, with one or more sufficient sureties, to the effect that the obligors are bound, in double the value of the property, that the defendant shall perform the judgment of the court in the action, or that the property or its value shall be forthcoming, and subject to the order of the court for the satisfaction of such judgment.

§ 257. For the purpose of taking this bond, the sheriff shall cause the property to be appraised by three disinterested housekeepers to be selected and sworn by him to make a fair appraisement, who shall indorse their appraisement on the order of attachment.

§ 258. In any proceeding on this bond, it shall not be a defense that the property was not subject to the attachment.

§ 259. The sheriff shall return upon every order of attachment, what he has done under it. The return must show the property attached, the time it was attached, and the disposition made of it. Where garnishees are summoned, their names and the time each was summoned must be stated. And, where real property is attached, the sheriff shall describe it with sufficient certainty to identify it, and, where he can do so, by a reference to the deed or title under which the defendant holds it. He shall return, with the order, all bonds taken under it.

SUBDIVISION IV.

1851.

Disposition of attached property.

§ 260. The court shall make proper orders for the preservation and use of the property during the pendency of the action, and for paying into court or securing the debts and funds attached. It may direct a sale of the property, other than slaves, where, by reason of its perishable nature, or of the cost of keeping it, a sale would be for the benefit of the parties. In vacation, such sale may be ordered by the judge of the court, or, of any such property other than a steamboat, by the presiding judge of the county court. The sale shall be public, after advertisement, and made in such manner and upon such terms of credit, with security, as the court or judge, having regard to the probable duration of the action, may direct. The proceeds, if collected by the sheriff, together with all the moneys received by him from garnishees, shall be held and paid over by him under the same requirement and responsibilities of himself and his sureties, as are provided in respect to money deposited in lieu of bail.

Disposition to be made of attached property.

§ 261. The sheriff shall be allowed by the court the necessary expenses of keeping the attached property, to be paid by the plaintiff, and taxed in the costs. In the case of a steamboat attached, he may be allowed, for his own superintendence thereof, not exceeding one dollar per day, and such sums as he may actually expend for the safe-keeping of the boat, not to exceed, for the pay of persons employed, the usual wages of a mate and a deck hand, unless more than two persons have been employed by the order of the court or the judge thereof.

Sheriff to be allowed necessary expenses for keeping attached property.

§ 262. The defendant or claimant of any attached property, may be required by the court to attend before it, and give information, on oath, respecting the property.

Defendant or claimant of attached property compelled to give information concerning attached property.

SUBDIVISION V.

Proceedings upon attachments.

§ 263. If the defendant, at any time before judgment, causes a bond to be executed to the plaintiff by one or more sufficient sureties to be approved by the court, to the effect that the defendant shall perform the judgment of the court, the attachment shall be discharged, and restitution made of any property taken under it, or the proceeds thereof.

Defendant may before judgment give bond & surety, and have attachment discharged.

§ 264. The bond mentioned in the last section, may, in vacation, be executed in the presence of the sheriff having the order of attachment in his hands, or, after the return of the order, before the clerk, with the same effect upon the attachment as if executed in court; the sureties, in either case, to be approved by the officer.

Such bond may be given to sheriff or clerk in vacation.

§ 265. A garnishee may pay the money owing to the defendant by him, to the sheriff having in his hands the

Garnishee may pay money to

1851.

sheriff or court
and be discharged
of costs.

order of attachment, or into the court. He shall be discharged from liability to the defendant, for any money so paid, not exceeding the plaintiff's claim. He shall not be subjected to costs beyond those caused by his resistance of the claim against him; and if he discloses the property of the defendant in his hands, or the true amount owing by him, and delivers or pays the same according to the order of the court, he shall be allowed his costs.

Garnishee sum-
moned shall ap-
pear and make a
full disclosure.

§ 266. Each garnishee summoned shall appear. The appearance may be in person, or by the affidavit of the garnishee filed in court, disclosing truly the amount owing by him to the defendant, whether due or not, and the property of the defendant in the possession or under the control of the garnishee; and in the case of a corporation, any shares of stock therein held, by or for the benefit of the defendant, at or after the service of the order of attachment.

Garnishee may
be examined, &
property or mo-
ney left in his
hands or deliv-
ered to some
other person.

§ 267. Where a garnishee, or officer of a corporation summoned as a garnishee, appears in person, he may be examined on oath; and, if it is discovered on such examination that, at or after the service of the order of attachment upon him, he or the corporation was possessed of any property of the defendant, or was indebted to him, the court may order the delivery of such property, and the payment or security for the payment of the amount owing by the garnishee, into the court, or to such person as it may direct, who shall give bond, with security, for the same; or the court may permit the garnishee to retain the property or the amount owing, upon the execution of a bond with one or more sufficient sureties, to the effect that the amount shall be paid, or the property shall be forthcoming, as the court may direct. Performance of these bonds may be summarily enforced by orders and proceedings as in cases of contempt.

Garnishee may
not be proceed-
ed against for
contempt in fail-
ing to appear.

§ 268. The court may, on the motion of the plaintiff, compel the appearance in person, and examination of any garnishee, or officer of a corporation summoned as a garnishee, by process as in cases of contempt; or, where a garnishee makes default by not appearing, it may hear proof of any debt or property owing or held by him to or for the defendant, and make such order in relation thereto, as if what is so proved had appeared on the examination of the garnishee.

After garni-
shee is summon-
ed, plaintiff may
sue him as in
other cases.

§ 269. Upon the service of a summons upon any garnishee, or after his failure to make a disclosure satisfactory to the plaintiff, the latter may proceed in an action against him, by filing a petition verified as in other cases, and causing a summons to be issued upon it; and, thereupon, such proceedings may be had as in other actions, and judgment be rendered in favor of the plaintiff to subject the property of the defendant in the hands of the garni-

shee, or for what shall appear to be owing to the defendant by the garnishee. The judgment may be enforced by execution, or other proper means.

§ 270. If judgment is rendered in the action for the defendant, the attachment shall be discharged, and the property attached, or its proceeds, shall be returned to him.

§ 271. If judgment is rendered for the plaintiff, the court shall apply in satisfaction thereof

1. The moneys arising from the sales of perishable property.

2. The proceeds of the debts and funds attached in the hands of the garnishee.

If these are not sufficient to satisfy the plaintiff's claim, the court shall order a sale, by the sheriff, of any other attached property which may be under its control, in the following order :

1. Personal property, other than slaves.

2. Slaves.

3. Real property, or so much thereof as may be necessary to satisfy the plaintiff's claim.

§ 272. No order for the sale of real property attached in virtue of the provisions of this article, shall be made in any action in which the defendant has not appeared or been actually summoned, until there has been filed an affidavit of the plaintiff, or of his agent or attorney, to the effect that the defendant has no personal property, or not enough to satisfy the claim of the plaintiff, in this state, known to the affiant.

§ 273. Any surplus of the attached property, or its proceeds, shall be returned to the defendant.

§ 274. The sales shall be public, upon such notice, and at such time and place as the court may direct. When credits are given, bonds, with security, shall be required; and the credit shall not be longer than three months for personal property, and not less than three nor more than twelve months for real property, or on instalments equivalent to not more than twelve months' credit on the whole; and, upon real property, a lien shall be retained. The sales shall be subject to the confirmation of the court.

275. The court may compel the delivery to the sheriff, for sale, of any of the attached property for which a bond may have been given, and may proceed summarily on such bond to enforce the delivery of the property, or the payment of such sums as may be due upon the bond, by rules and attachments as in cases of contempt.

§ 276. The court may, from time to time, make and enforce proper orders respecting the property, sales, and the confirmation thereof, and the application and payment of the moneys collected.

§ 277. It may order the sheriff to repossess himself, for the purpose of selling it, of any of the attached property

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If judgment is rendered for defendant, attachment to be discharged.

If judgment is rendered for plaintiff, money and property to be subjected to its payment.

Real property not to be sold without service of summons or appearance, unless personal property is insufficient.

Surplus to be returned to defendant.

Terms and manner of selling attached property.

Court may enforce the delivery of attached property, as for contempt.

Court to make proper orders, from time to time, of attached property.

May order sheriff to repossess.

1851.

sees himself of
attached prop-
erty.

Any person
may prefer his
claim to the at-
tached property
or its proceeds,
and have his
claim adjudicat-
ed. Where there
are several at-
tachments,
court may refer
the question of
priority and a-
mount to a com-
missioner.

which may have passed out of his hands without having been sold or converted into money; and the sheriff shall, under such order, have the same power to take the property as upon an order of attachment.

§ 278. Any person may, before the sale of any attached property, or before the payment to the plaintiff of the proceeds thereof, or of any attached debt, present his petition, verified by oath, to the court, disputing the validity of the attachment, or stating a claim to the property or to an interest in or lien on it under any other attachment, or otherwise, and setting forth the facts upon which such claim is founded, and his claim shall be investigated. A non-resident petitioner shall, in all such cases, give security for costs. The court may hear the proof, or may order a reference to a commissioner, or may impanel a jury to inquire into the facts. If it is found that the petitioner has title to, a lien on, or any interest in such property, the court shall make such order as may be necessary to protect his rights. The costs of this proceeding shall be paid by either party, at the discretion of the court.

Where several attachments are executed on the same property, the court, on the motion of any one of the attaching plaintiffs, may order a reference to a commissioner, to ascertain and report the amounts and priorities of the several attachments.

Defendant may
rule plaintiff to
give additional
surety in his
bond.

§ 279. The defendant may, at any time before judgment, after reasonable notice to the plaintiff, move the court for additional security on the part of the plaintiff; and if, on such motion, the court is satisfied that the surety in the plaintiff's bond has removed from this state, or is not sufficient for the amount thereof, it may vacate the order of attachment and direct restitution of any property taken under it, unless in a reasonable time, to be fixed by the court, sufficient security is given by the plaintiff.

ARTICLE II.

Attachments in certain actions.

Plaintiff may
have attach-
ment before the
debt is due un-
der certain cir-
cumstances.

§ 280. In an action brought by a creditor against his debtor, the plaintiff may, before his claim is due, have an attachment against the property of the debtor, where

1. He has sold, conveyed, or otherwise disposed of his property, or suffered or permitted it to be sold, with the fraudulent intent to cheat or defraud his creditors, or to hinder or delay them in the collection of their debts; or

2. Is about to make such fraudulent sale, conveyance, or disposition of his property, with such intent; or

3. Is about to remove his property, or a material part thereof, out of this state, with the intent, or to the effect, of cheating or defrauding his creditors or of

hindering or delaying them in the collection of their debts.

1851.

§ 281. The attachments authorized by the last section, may be granted by the court in which the action is brought or by the judge thereof or any circuit judge, or by the presiding judge of the county court, where the petition verified by the oath of the plaintiff, shows any of the grounds for an attachment enumerated in that section, and the nature and amount of the plaintiff's claim, and when the same will become due.

And may be granted by circuit or county judge.

§ 282. The order of the court or judge granting the attachment, shall specify the amount for which it is allowed, not exceeding a sum sufficient to satisfy the plaintiff's claim, and the probable costs of the action.

Order to specify the amount for which it is allowed.

§ 283. The order of attachment as granted by the court or judge, shall not be issued by the clerk, until there has been executed in his office such bond on the part of the plaintiff as is directed in section two hundred and forty-five.

Bond to be executed by the plaintiff before attachment issues.

§ 284. The provisions in the first article of this chapter subsequent to section two hundred and forty-five, shall, so far as they are applicable, regulate the attachments authorized by this article.

Provisions in first article after § 245 to regulate attachments under article 2.

ARTICLE III.

Attachments against specific property.

- SUBDIVISION 1. *Against steamboats.*
2. *Other specific attachments.*
3. *General provisions.*

SUBDIVISION I.

Against steamboats.

§ 285. In an action to enforce the liability, by statute, of a steamboat or other vessel, for the removal of a slave, or to enforce a lien upon a steamboat for the wages of its officers or crew, or for work, materials, provisions, stores, or supplies, or to enforce the liability of such boat for an injury to another boat or craft, or for a trespass of its officers or crew, if the petition shows a sufficient cause of action and the amount of the plaintiff's claim, and is verified by his oath, an attachment may be granted against such boat or vessel and her engine and furniture by the court in which the action is brought, or by the judge thereof or any circuit judge, or by the presiding judge of the county court. Every order for such attachment must specify the sum for which it is granted, not exceeding the plaintiff's claim for principal and interest, as existing at the time of the order, with three years' interest thereon and the probable costs of the action.

Attachments may be issued against steamboats.

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Several persons may unite in action. Those unable to give surety may proceed without to the extent of \$50.

No attachment to be issued unless bond is executed or dispensed with as in last section.

Order of attachment against steamboats to be executed like other attachments.

Sheriff may deliver steamboat attached to the master upon his executing bond.

That boat was not liable no defense to an action on a bond.

Defendant may at any time before judgment give bond for steamboat.

The bond may be given to the sheriff or clerk in vacation.

§ 286. Where the action mentioned in the last section is for the wages of the officers or crew of a steamboat, or for work done upon, or materials, provisions, stores, or supplies furnished to such boat, and there are several plaintiffs having distinct claims separately stated in the petition, an attachment may be granted in favor of each plaintiff for his claim. And where, in any such case, the plaintiff, or any one of several plaintiffs, shall annex to the petition his affidavit that he is unable to give security, and the affidavit of some disinterested person that his claim is just, the court or judge granting the attachment for such claim, may direct that it shall issue for an amount not exceeding fifty dollars, without security on the part of such plaintiff.

§ 287. The order of attachment as granted by the court, shall not be issued by the clerk, except where security is dispensed with as provided in the last section, until there has been executed in his office such bond on the part of the plaintiff as is directed in section two hundred and forty-five.

§ 288. The order of attachment shall be issued, directed, executed, and returned as an order of general attachment is directed to be returned.

§ 289. The sheriff may deliver any steamboat or other vessel attached, to the master or person in charge of such boat or vessel when attached, upon the execution of a bond to the plaintiff, in the presence of the sheriff, by such person, with one or more sureties, sufficient for the sum for which the attachment was granted, to the effect that the obligors will pay to the plaintiff such sums of money as may be adjudged to him in the action, or that the boat or vessel shall be forthcoming, and subject to the order of the court, for the satisfaction of such judgment as may be rendered therein—whichever shall be directed by the court.

§ 290. In any proceeding on the bond mentioned in the last section, it shall be no defense that the boat or vessel was not subject to the attachment.

§ 291. If the defendant, or any owner of the boat, shall, at any time before judgment, cause a bond to be executed to the plaintiff by one or more sureties, sufficient for the sum for which the attachment was granted, to be approved by the court, to the effect that the defendant shall perform the judgment of the court, the attachment shall be discharged, and restitution made of the boat.

§ 292. The bond mentioned in the last section may, in vacation, be executed in the presence of the sheriff having the order of attachment in his hands, or, after the return of the order, before the clerk, with the same effect as if executed in court. The sureties shall be such as are approved by the officer.

§ 293. Where the attachment is for a sum exceeding the value of the boat, which the sheriff may have appraised as

provided in section two hundred and fifty-seven, he may take the bond of the master, or person in charge of the boat when attached, mentioned in section two hundred and ninety-two, with sureties sufficient for the appraised value of the boat; and such bond, in that case, shall provide that the liability of the obligors shall not exceed such appraised value.

SUBDIVISION II.

Other specific attachments.

§ 294. In an action to enforce a mortgage of or lien upon personal property, or for the recovery, partition, or sale of such property, or by a plaintiff having a future estate or interest therein, for the security of his rights, where it satisfactorily appears, by the petition verified on oath, or by affidavits or the proofs in the cause, that the plaintiff has a just claim, and that the property is about to be sold, concealed, or removed from the state, or where the plaintiff states on oath that he has reasonable cause to believe and does believe that, unless prevented by the court, the property will be sold, concealed, or removed from the state, an attachment may be granted against the property.

§ 295. In an action by a vendor of property fraudulently purchased, to vacate the contract and have a restoration of the property or compensation therefor, where the petition shows such fraudulent purchase of property and the amount of the plaintiff's claim, and is verified by his oath, an attachment against the property may be granted.

§ 296. The attachments in the cases mentioned in the last two sections, may be granted by the court in which the action is brought, or by the judge thereof or any circuit judge, or the presiding judge of the county court, upon such terms and conditions as to security, on the part of the plaintiff, for the damages which may be occasioned by them, and with such directions as to the disposition to be made of the attached property, as may be just and proper under the circumstances of each case.

§ 297. In every case, the plaintiff shall be required to give security for the damages to the defendant, in an adequate sum to be specified in the order granting the attachment; and, where it may be proper, the court or judge may direct that the defendant or person in possession of the attached property, shall be permitted to retain it, upon giving such bond with security, and for such sum as the court or judge may prescribe.

§ 298. No order of attachment shall be issued by the clerk, until the bond on the part of the plaintiff required by the order of the court or judge, is executed in his office, by one or more sufficient sureties of the plaintiff.

§ 299. The order of attachment shall describe the specific property against which it is issued, and shall have in-

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If attachment exceeds value of boat, bond to be taken for its value.

Attachment may be granted to prevent removal of property, where the plaintiff claims a lien, or is a joint owner thereof.

In action to cancel contract for fraud, plaintiff may have an attachment.

The attachment may be granted by the court, or by any circuit or county court judge, upon proper terms.

In every such case plaintiff to give security for the damages sustained.

No order of attachment to issue without bond and good surety.

The order shall describe the specific property

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against which it
is issued.

Sheriff to dis-
pose of property
as directed—if
no directions
are given, to
keep it.

Court may pre-
scribe the condi-
tions of bond by
defendant to ob-
tain discharge
of attachment.

Sheriff may
pursue a steam
boat to another
county within
24 hours.

Where prop-
erty has been re-
moved or con-
cealed, defend-
ant may be re-
quired to dis-
close the facts.

Performance
of bonds in at-
tachment cases
may be summa-
rily enforced by
rules.

Provision of
first article of
this chapter may
be applied on
certain condi-
tions.

Defendant may,
before judgment
move to dis-
charge attach-
ment, upon no-
tice.

Motion may
be founded on
the papers and
affidavits taken.

dorsed upon it the direction of the court or judge, as to the disposition to be made of the attached property. It shall be directed, executed, and returned as other orders of attachment.

§ 300. The sheriff shall make such disposition of the attached property as may be directed by the court or judge, and, where there is no direction upon the subject, he shall safely keep the property subject to the order of the court.

§ 301. The court may, in any of the cases mentioned in sections two hundred and ninety-four and two hundred and ninety-five, direct the terms and conditions of the bond to be executed by the defendant with security in order to obtain a discharge of the attachment.

SUBDIVISION III.

General provisions.

§ 302. Where, after an order of attachment against a steamboat or other specific property has been placed in the hands of the sheriff, such boat or property is removed from the county, the sheriff may pursue and attach it in another county, within twenty-four hours after such removal.

§ 303. Where it appears, by the return of the sheriff or by the affidavit of the plaintiff, that any specific property against which an order of attachment is issued, has been concealed or removed by the defendant, the court may require him to attend and be examined on oath respecting such matter, and may enforce its orders in this respect as in cases of contempt.

§ 304. Performance of bonds to obtain discharge of specific attachments, or for the forthcoming of steamboats or other property specifically attached, may, in all cases, be summarily enforced by rules and proceedings as in cases of contempt.

§ 305. The provisions of the first article of this chapter not inconsistent with the foregoing sections of this article, may be applied, so far as shall be proper, to regulate the proceedings in cases of attachments against specific property.

ARTICLE IV.

Discharge and reinstatements of attachments.

§ 306. The defendant may, at any time before judgment, move to discharge an attachment. Reasonable notice of the motion shall be given to the plaintiff.

§ 307. The motion may be founded upon the papers and evidence in the case, or sustained by affidavits; and, where it is so sustained, it may be opposed by affidavits in addition to that on which the order of attachment was obtained; and, where the court is satisfied that the order

was obtained on false suggestions, or without sufficient cause, it may discharge the attachment.

§ 308. Where the plaintiff desires a reinstatement of the attachment, he may have an entry made upon the record of leave to apply therefor within a reasonable time not exceeding twenty days. And in such case, the order of discharge shall be made, to take effect at the end of the period so limited, unless the attachment is reinstated in the meantime.

§ 309. A judge of the court of appeals, in any case in which the plaintiff has secured the right to apply therefor in the manner provided in the last section, may, upon an inspection of copies of the record and of the depositions and affidavits read upon the motion to discharge, reinstate the attachment; and, if the order of reinstatement shall be filed in the clerk's office of the court in which the action is pending within the time limited as provided in the last section, the execution of the order of attachment shall proceed; otherwise, it shall stand discharged, and restitution shall be made of any property taken under it.

Plaintiff may have an entry to reinstate attachment in reasonable time, not exceeding twenty days.

Attachment may be reinstated within twenty days by a judge of court of appeals.

CHAPTER 4.

Injunction.

ART. 1. *When and how an injunction may be obtained:*

2. *Dissolution and reinstatement of injunction.*

ARTICLE I.

When and how an injunction may be obtained.

§ 310. Injunctions to stay proceedings in actions or suits commenced before this code takes effect, are not affected by its provisions, but are to be granted, to proceed in all respects, and be determined as if it had not been adopted.

Injunctions obtained before this code takes effect not affected by it.

§ 311. The injunction provided by this code, is a command to refrain from a particular act. It may be the final judgment in an action, or may be allowed as a provisional remedy; and where so allowed, it shall be by order. The writ of injunction is abolished.

Writ of injunction abolished.

§ 312. Where it appears by the petition that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act which would produce great or irreparable injury to the plaintiff, or where, during the litigation, it appears that the defendant is doing, or threatens or is about to do, or is procuring or suffering to be done, some act, in violation of the plaintiff's rights, respecting the subject of the action and tending to render the judgment ineffectual, a temporary injunction may be granted to restrain such act. It may also be granted in any case where it is specially authorized by statute.

Causes for which an injunction may be issued.

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When and by whom an injunction may be granted.

Injunctions granted before final judgment subject to the further orders of the court.

Court or judge may direct that notice be given before granting an injunction.

No injunction to be granted against defendant who has answered, without notice.

Injunction to stop business of a corporation, &c., can only be granted on notice.

On hearing of application, each party may read affidavits.

Order for injunction to specify amount of bond to be given and conditions thereof.

§ 313. The injunction may be granted at the commencement of the action, or at any time before judgment, by the court, or by the judge thereof or any circuit judge, or by the presiding judge of the county court, where it appears by the petition that the plaintiff is entitled thereto. And, during a litigation, it may be granted by the court, or by the judge thereof or any circuit judge, where it satisfactorily appears by affidavits that sufficient grounds exist therefor.

§ 314. All injunctions granted before final judgment, shall be subject to the further order of the court.

§ 315. The court or judge to whom an application for an injunction is made, may direct a reasonable notice to be given to the party against whom the injunction is asked, to attend and show cause against it at a specified time and place, and may, in the meantime, restrain such party.

§ 316. An injunction shall not be granted against a defendant who has answered, unless he has had notice of the application therefor.

§ 317. An injunction to stop the general and ordinary business of a corporation, or the operations of a turnpike, railroad, or canal company, or of a municipal corporation, or of the trustees of a town, or any building, erection, or other work, or to restrain a nuisance or the unlawful issue or circulation of small notes or bills, can only be granted by the court, or by the judge thereof or any circuit judge, upon reasonable notice of the time and place of the application therefor, to the party enjoined.

§ 318. On the hearing of an application for an injunction of which notice has been given, each party may read affidavits.

§ 319. In every case, the court or judge granting an injunction shall specify in the order therefor an amount, for which the party obtaining it shall give security in a bond to the party enjoined, before the injunction shall become effectual; which amount shall be sufficient to cover all the probable damages and costs that may be occasioned by the injunction. The court or judge may prescribe the effect of the bond, so as to secure to the party enjoined the damages to which he may become entitled, if it is finally decided that the injunction ought not to have been granted. Where the injunction is to stay proceedings upon a judgment or final order for money, the amount for which security is required shall be sufficient to cover, with other damages, the sum enjoined, with five years' interest thereon. Where the injunction is to stay proceedings upon a judgment for property, the amount specified in the order shall be sufficient to cover also the rent, hire, or value of the use thereof for two years; and in case of personal property, its value likewise.

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No injunction to issue without bond being given.

Sureties in injunction bonds to be taken by clerk.

To whom order of injunction to be addressed, and manner of serving it.

Notice of an injunction operates as service of an order.

When injunction binds a party.

No injunction to be granted where the matter in dispute is less than five pounds.

Injunction to stay judgment can only be granted in court that rendered it.

Judge cannot grant injunction after motion has been overruled in court.

§ 320. The order of injunction shall not be issued by the clerk, until the bond mentioned in the last section has been executed in his office by one or more sufficient sureties of the party obtaining the injunction. Where the injunction is to stay proceedings upon a judgment or final order, the bond shall be to the effect that the party obtaining the injunction will satisfy the judgment or order, or so much of it as is enjoined, to the extent to which the injunction may be dissolved; and that he will also satisfy any modified judgment or order that may be rendered or made in lieu of it, or so much of it as exceeds the amount left uninjoined. In other cases, unless otherwise directed by the court or judge, the bond shall be to the effect that the party giving it will pay to the party enjoined such damages as he may sustain, if it is finally decided that the injunction ought not to have been granted.

§ 321. Sureties in injunction bonds shall be taken by the clerk, under the same responsibilities as in other cases of sureties taken by him.

§ 322. The order of injunction shall be addressed to the party enjoined, shall state the injunction, and shall be dated and signed by the clerk. Where it is issued at the commencement of the action, it shall be indorsed upon the summons, and the copy thereof delivered to the sheriff. Where it is issued during the litigation, it shall be delivered to him with as many copies thereof as there are parties enjoined. The sheriff shall forthwith serve it, by delivering a copy to each party enjoined, and make return thereof on the order.

§ 323. Where notice of the application for an injunction has been given to the party enjoined, it shall not be necessary to serve the order upon him; he is bound by the injunction as soon as the bond required of the adverse party is executed.

§ 324. An injunction binds the party from the time he is informed thereof.

§ 325. No injunction shall be granted to stay proceedings upon a judgment of a justice of the peace, or of a county court, where the value of the matter in dispute does not exceed five pounds.

§ 326. An injunction to stay proceedings on a judgment or final order of a court, shall not be granted, in an action brought, by the party seeking the injunction, in any other court than that in which the judgment or order was rendered or made. Nor shall such injunction be granted, unless the party applying therefor makes affidavit that no injunction has been previously granted to stay the proceedings on such judgment or order.

§ 327. No injunction shall be granted by a judge, after a motion therefor has been overruled by the court. Nor shall any be granted by a judge of a county court, where it has

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Disobedience of an injunction may be punished as a contempt, in vacation.

Affidavits read on application for injunction to be filed with papers.

Party who is enjoined may move for additional surety.

Party enjoined may, upon notice, move to dissolve or modify injunction.

Injunction granted by county judge may be dissolved or modified in vacation by the judge of the court or a circuit judge.

After answer filed party enjoined may give notice and move to dissolve injunction.

Motion to dissolve or modify may be continued.

been refused by the judge of the court in which the action is brought, or by any circuit judge. A judge refusing an application for an injunction, shall, if requested by the defendant, give him a certificate thereof.

§ 328. Disobedience of an injunction may be punished by the court, or by the judge thereof, or any circuit judge in vacation, as a contempt. An attachment may be issued by the court or judge, upon the production of evidence by affidavit of the breach of the injunction, against the party committing the same. And unless he purges the contempt, if in vacation, the judge may commit him to jail until the sitting of the court, or take a bond with security for his appearance, to answer for the contempt at the next term of the court, and, in the meantime, to obey the injunction.

§ 329. The affidavits read upon an application for an injunction, shall be filed with the papers of the case.

§ 330. A party enjoined may, at any time before judgment, upon reasonable notice to the party who has obtained the injunction, move the court for additional security on behalf of such party; and, if it appears on such motion that the surety in the injunction bond has removed from this state, or is insufficient, the court may vacate the order of injunction, unless in a reasonable time sufficient security is given.

ARTICLE II.

Dissolution and reinstatement of injunction.

§ 331. The party enjoined may, at any time, upon reasonable notice to the plaintiff, move the court, upon the plaintiff's petition and affidavits alone, to dissolve or modify an injunction of the application for which no notice was given.

§ 332. A motion to dissolve or modify an injunction granted by a county judge, may, at any time, upon reasonable notice to the plaintiff, be made before the judge of the court or any circuit judge, upon the plaintiff's petition and affidavits alone. The order of the judge overruling the same, or dissolving or modifying the injunction, with the notice, shall be returned to the office of the clerk of the court. They shall be noted upon the record and the order obeyed, as if made by the court.

§ 333. After answer filed by the party enjoined, he may give notice to the plaintiff of a motion to be made to the court in not less than ten days thereafter upon the whole case, to dissolve or modify the injunction. Upon such motion, each party may read depositions and other competent evidence in writing. The court shall be bound to take the answer as true.

§ 334. The motion upon the whole case to dissolve or modify the injunction, may be postponed on the application of either party, to a subsequent day, or, to the next term, where the court is satisfied that, under the circumstances of

the case, the delay is proper. When delay is asked in order to obtain the testimony of a witness, it must appear by affidavit what facts the witness is expected to prove, that the affiant believes his testimony will be true, and that it could not have been obtained by due diligence.

§ 335. After hearing the motion, the court or judge shall overrule the same, or dissolve or modify the injunction, according to the right of the case.

§ 336. Only one motion to dissolve or modify an injunction upon the whole case, shall be allowed.

§ 337. Upon the dissolution in whole or in part of an injunction to stay proceedings upon a judgment or final order, the damages shall be assessed by the court, which may hear the evidence and decide in a summary way, or may, at its discretion, cause a jury to be impaneled to find the damages. Where money is enjoined, the damages may be any rate per cent. on the amount released by the dissolution, which, in the discretion of the court, may be proper, not exceeding ten per cent. And, where the delivery of property has been delayed by the injunction, the value of the use, hire, or rent thereof shall be assessed. Judgment shall be rendered, against the party who obtained the injunction, for the damages assessed; and the assessment shall be conclusive against the surety of such party.

§ 338. Where the plaintiff desires to apply for a reinstatement of an injunction dissolved or modified on motion, the court or judge shall make the order of dissolution or modification to take effect in a reasonable time thereafter, not exceeding twenty days, and shall express in the order that the plaintiff has leave to apply in the meantime for a reinstatement of the injunction.

§ 339. A judge of the court of appeals, in any case in which the plaintiff has secured the right to apply therefor as provided in the last section, may, upon an inspection of copies of the record, and of the depositions and evidence read upon the motion to dissolve or modify the injunction, reinstate the same in whole or in part. And, if the order of reinstatement is filed in the clerk's office in the time limited as provided in the last section, the injunction, as reinstated, shall be obeyed; otherwise, the order of dissolution or modification shall take effect.

CHAPTER 5.

Receiver.

§ 340. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owing or interested in any property or fund, on the application of the plaintiff or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund

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After hearing case court or circuit judge may decide.

One motion only allowed to dissolve injunction.

Upon dissolution of an injunction damages may be assessed —if for money, not exceeding ten per cent.—if for property, value of use, hire, or rent.

Order of dissolution to take effect in a reasonable time if desired by the plaintiff.

Injunction may be reinstated by a judge of the court of appeals.

A receiver may be appointed to take charge of property pending action.

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A receiver may be appointed to take charge of mortgaged property.

No party interested shall be appointed receiver.

Receiver to be sworn, and execute bond with surety.

Receiver may bring & defend actions, collect debts, &c.

If party has money or property as trustee court may order its delivery.

Court may enforce delivery of thing, or require sheriff to seize it.

Sheriff allowed expenses for keeping property, to be taxed as costs.

Sheriff may be the depository of money, as in cases of bail, in § 210.

is in danger of being lost, removed, or materially injured, the court may appoint a receiver to take charge thereof during the pendency of the action, and may order and coerce the delivery of it to him.

§ 341. In an action by a mortgagee for the foreclosure of his mortgage, and sale of the mortgaged property, a receiver may, in like manner, be appointed, where it appears that the mortgaged property is in danger of being lost, removed, or materially injured, or that the condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt.

§ 342. No party, or attorney or person interested in an action, shall be appointed receiver therein.

§ 343. Before entering upon his duties, the receiver must be sworn to perform them faithfully, and, with one or more sureties approved by the court, execute a bond to such person and in such sum as the court shall direct, to the effect that he will faithfully discharge the duties of receiver in the action, and obey the orders of the court therein.

§ 344. The receiver has, under the control of the court, power to bring and defend actions, to take and keep possession of the property, to receive rents, collect debts, and, generally, to do such acts respecting the property as the court may authorize.

CHAPTER 6.

Deposit in court.

§ 345. Where it is admitted, by the pleading or examination of a party, that he has in his possession, or under his control, any money, or other thing capable of delivery, which, being the subject of the litigation, is held by him as trustee for another party, or which belongs or is due to another party, the court may order the same to be deposited in court, or delivered to such party with or without security, subject to the further direction of the court.

§ 346. Wherever in the exercise of its authority, a court has ordered the deposit or delivery of money or other thing, and the order is disobeyed, the court, besides punishing the disobedience, may make an order requiring the sheriff to take the money or thing, and deposit or deliver it in conformity with its direction.

§ 347. The court may direct the sheriff to keep safely any property delivered pursuant to the provisions of this chapter, and may allow him the necessary expenses attending the same, to be paid by such party as the court shall direct, and taxed in the costs of the action.

§ 348. It may confide to the sheriff money deposited or paid into court, which shall be kept by him under the same requirements and responsibilities of himself and his sureties as are provided by this code in respect to money deposited in lieu of bail.

§ 349. A court sitting in a county in which, or in any county adjoining which, there is a bank, or a branch of a bank, created by the laws of this state, transacting regular banking business, may order money paid into court to be deposited in such bank or branch to the credit of the court, in the action or proceeding in which the money was paid. Money so deposited, shall be paid only upon the check of the clerk of the court, annexed to its certified order for the payment, and in favor of the person to whom the order directs the payment to be made.

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Court may order money to be paid into bank.

§ 350. Money deposited or paid into court in any action, shall not be loaned out by the court, unless with the consent of all the parties having an interest in or making claim to the same.

Such money shall not be loaned out except by consent of parties.

TITLE IX. TRIAL AND JUDGMENT.

- CHAP. 1. *Issue.*
2. *Trial.*
3. *Judgment.*

CHAPTER 1.

Issue.

§ 351. Issues arise on the pleadings, where a fact, or conclusion of law, is maintained by one party and controverted by the other. They are of two kinds :

Issues are of two kinds: law and fact.

1. Of law.
2. Of fact.

§ 352. An issue of fact arises

1. Upon a material allegation in the petition, denied by the answer.
2. Upon a set-off or counter-claim presented in the answer, and denied by the reply.
3. Upon material new matter in the answer or reply, which shall be considered as controverted by the opposite party without further pleading.

Upon what issues of fact arise.

CHAPTER 2.

Trial.

- ART. 1. *Trial in general.*
2. *Trial by jury.*
3. *Trial by the court.*
4. *Exceptions.*
5. *New trial.*
6. *General provisions.*
7. *Time of trial.*

ARTICLE I.

Trial in general.

§ 353. A trial is a judicial examination of the issues, whether of law or of fact, in an action.

Trial.

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Issues of law
tried by the
court—those of
fact by a jury,
unless waived.

Other issues by
the court.

Cases to be
tried in the or-
der docketed.

Motion to post-
pone trial must
be made upon
affidavit.

§ 354. Issues of law must be tried by the court. Issues of fact, arising in actions by ordinary proceedings for the recovery of money, or of specific real or personal property, shall be tried by a jury, unless a jury trial is waived.

§ 355. All other issues of fact, whether arising in ordinary or equitable proceedings, shall be tried by the court, subject to its power to order any issue or issues to be tried by a jury.

§ 356. The trial in each action shall be in the order in which it stands upon the docket.

§ 357. A motion to postpone a trial on account of the absence of evidence, can be made only upon affidavit showing the materiality of the evidence expected to be obtained, and that due diligence has been used to obtain it; and, if it is for an absent witness, the affidavit must show what facts the affiant believes the witness will prove, and not merely the effect of such facts in evidence, and that the affiant himself believes them to be true. If, thereupon, the adverse party will consent that, on the trial, they shall be taken as true, the trial shall not be postponed for that cause.

ARTICLE II.

Trials by jury.

- SUBDIVISION 1. *Formation of the jury.*
2. *Conduct of the trial.*
 3. *Verdict.*

SUBDIVISION I.

Formation of the jury.

§ 358. The general mode of summoning, impanneling, challenging, and swearing the jury, is not changed by this code.

Mode of im-
panneling jury
not changed.

SUBDIVISION II.

Conduct of the trial.

§ 359. When the jury has been sworn, the trial shall proceed in the following order, unless the court for special reasons otherwise directs:

Mode of con-
ducting a trial.

1. The plaintiff must briefly state his claim, and the evidence by which he expects to sustain it.
2. The defendant must then briefly state his defense, and the evidence he expects to offer in support of it.
3. The party on whom rests the burthen of proof in the whole action, must first produce his evidence; the adverse party will then produce his evidence.
4. The parties will then be confined to rebutting evidence, unless the court, for good reasons in furtherance of justice, permits them to offer evidence in their original case.
5. When the evidence is concluded, either party may

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request instructions to the jury on points of law, which shall be given or refused by the court; which instructions shall be reduced to writing, if either party require it.

6. The parties may then submit or ague the case to the jury. In the argument, the party having the burthen of proof shall have the conclusion, and the adverse party the opening. If there is more than one speech on either side, or if several defendants having separate defenses, appear by different counsel, the court shall arrange their relative order.

§ 360. Whenever, in the opinion of the court, it is proper for the jury to have a view of real property which is the subject of litigation, or of the place in which any material fact occurred, it may order them to be conduoted in a body under the charge of an officer to the place, which shall be shown to them by some person appointed by the court for that purpose. While the jury are thus absent, no person, other than the person so appointed, shall speak to them on any subject connected with the trial.

Jury may have a view of real property in litigation; or a place where a material fact occurred.

§ 361. When the case is finally submitted to the jury, they may decide in court or retire for deliberation. If they retire, they must be kept together in some convenient place, under the charge of an officer, until they agree upon a verdict or are discharged by the court, subject to the discretion of the court to permit them to separate temporarily at night, and at their meals. The officer having them under his charge, shall not suffer any communication to be made to them, or make any himself, except to ask them if they have agreed upon their verdict, unless by order of the court; and he shall not, before their verdict is rendered, communicate to any person the state of their deliberations, or the verdict agreed upon.

Duty of jury & court after cause is submitted to them.

§ 362. If the jury are permitted to separate either during the trial or after the case is submitted to them, they may be admonished by the court that it is their duty not to converse with, or suffer themselves to be addressed by, any other person, on any subject of the trial; and, during the trial, that it is their duty not to form or express an opinion thereon, until the cause is finally submitted to them.

If jury are permitted to separate, court must admonish them as to their duty.

§ 363. After the jury have retired for deliberation, if there is a disagreement between them as to any part of the testimony, or if they desire to be informed as to any point of law arising in the case, they may request the officer to conduct them into court, where the information required shall be given in the presence of or after notice to the parties or their counsel.

If jury disagree as to law or fact they may be brought into court.

§ 364. The jury may be discharged by the court on account of the sickness of a juror, or other accident or calamity requiring their discharge, or by consent of both parties, or after they have been kept together until it satisfactorily appears that there is no probability of their agreeing.

Causes for which a jury may be discharged.

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If jury are discharged, cause may be tried at same or next term.

Manner of delivering verdict. Jury may be polled.

Verdict must be in writing, and signed by foreman.

§ 365. In all cases where the jury are discharged during the trial or after the cause is submitted to them, it may be tried again, immediately or at a future time, as the court may direct.

§ 366. When the jury have agreed upon their verdict, they must be conducted into court, their names called by the clerk, and the verdict rendered by their foreman. When the verdict is announced, either party may require the jury to be polled, which is done by the clerk or court asking each juror if it is his verdict. If any one answers in the negative, the jury must again be sent out for further deliberation.

§ 367. The verdict shall be written, signed by the foreman, and read by the clerk to the jury, and the inquiry made, whether it is their verdict. If any juror disagrees, the jury must be sent out again; but if no disagreement is expressed, and neither party requires the jury to be polled, the verdict is complete, and the jury discharged from the case.

SUBDIVISION III.

Verdict.

§ 368. The verdict of a jury is either general or special. A general verdict is that by which they pronounce, generally, upon all or any of the issues, either in favor of the plaintiff or defendant. A special verdict is that by which the jury find the facts only. It must present the facts as established by the evidence, and not the evidence to prove them; and they must be so presented as that nothing remains to the court but to draw from them conclusions of law.

§ 369. In all actions, the jury, in their discretion, may render a general or special verdict, but may be required by the court, in any case in which they render a general verdict, to find specially upon particular questions of fact to be stated in writing. This special finding is to be recorded with the verdict.

§ 370. When the special finding of facts is inconsistent with the general verdict, the former controls the latter, and the court may give judgment accordingly.

§ 371. When, by the verdict, either party is entitled to recover money of the adverse party, the jury, in their verdict, must assess the amount of recovery.

§ 372. In actions for the recovery of specific personal property, the jury must assess the value of the property, as also the damages for the taking or detention, whenever, by their verdict, there will be a judgment for the recovery or return of the property.

ARTICLE III.

Trial by the court.

§ 373. The trial by jury may be waived by the parties in

The verdict may be either general or special.

Jury have discretion to find a general or special verdict.

If special finding is inconsistent with general verdict, the former controls.

The jury must assess the amount of recovery.

The value of property & damages for detention must be assessed.

actions arising on contract, and, with the assent of the court, in other actions, in the following manner:

1. By failing to appear at the trial.
2. By written consent in person, or by attorney, filed with the clerk.
3. By oral consent in open court entered on the record.

§ 374. Upon trials of questions of fact by the court, it shall not be necessary for the court to state its finding, except, generally, for the plaintiff or defendant, unless one of the parties requests it, with the view of excepting to the decision of the court upon the questions of law involved in the trial; in which case the court shall state in writing the conclusions of fact found, separately from the conclusions of law.

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Trial of jury may be waived, and cause submitted to court.

Court need not state facts specially, unless exceptions are filed.

ARTICLE IV.

Exceptions.

§ 375. An exception is an objection taken to a decision of the court upon a matter of law.

Exception.

§ 376. The party objecting to the decision, must except at the time the decision is made, and time may be given to reduce the exception to writing, but not beyond the succeeding term.

An exception must be taken at the time.

§ 377. No particular form of exception is required. The objection must be stated, with so much of the evidence as is necessary to explain it and no more, and the whole as briefly as possible.

No form necessary in filing exceptions.

§ 378. Where the decision objected to is entered on the record, and the grounds of objection appear in the entry, the exception may be taken by the party causing to be noted, at the end of the decision, that he excepts.

How exception to be taken where the facts appear upon the record.

§ 379. Where the decision is not entered on the record, or the grounds of objection do not sufficiently appear in the entry, the party excepting must reduce his exception to writing, and present it to the judge for his allowance and signature. If true, it shall be the duty of the judge to allow and sign it; whereupon, it shall be filed with the pleadings as part of the record, but not spread at large on the order book. If the writing is not true, the judge shall correct it, or suggest the correction to be made, and sign it. If the party excepting is not satisfied with the correction, upon his procuring the signatures of two by-standers attesting the truth of his exception as by him prepared, the same shall be filed as part of the record; but the truth of the exceptions may be controverted and maintained by affidavits, not exceeding five in number on each side, to be filed with the clerk within ten days after the filing of the exception.

Where they do not appear on the record; and how an exception may be obtained from by-standers.

§ 380. No exception shall be regarded, unless it is material and prejudicial to the substantial rights of the party excepting.

Exception must be material, & prejudicial to the rights of the party.

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ARTICLE V.

New Trials.

For what causes a new trial may be granted.

§ 381. A new trial is a re-examination in the same court of an issue of fact after a verdict by a jury or a decision by the court. The former verdict or decision may be vacated and a new trial granted, on the application of the party aggrieved, for any of the following causes affecting materially the substantial rights of such party :

1. Irregularity in the proceedings of the court, jury, or prevailing party, or any order of court or abuse of discretion, by which the party was prevented from having a fair trial.
2. Misconduct of the jury or prevailing party.
3. Accident or surprise which ordinary prudence could not have guarded against.
4. Excessive damages, appearing to have been given under the influence of passion or prejudice.
5. Error in the assessment of the amount of recovery, whether too large or too small, where the action is upon a contract or for the injury or detention of property.
6. That the verdict or decision is not sustained by sufficient evidence, or is contrary to law.
7. Newly discovered evidence, material for the party applying, which he could not, with reasonable diligence, have discovered and produced at the trial.
8. Error of law occurring at the trial, and excepted to by the party making the application.

For what causes a new trial shall not be granted.

§ 382. A new trial shall not be granted on account of the smallness of damages in an action for an injury to the person or reputation, nor in any other action where the damages shall equal the actual pecuniary injury sustained.

Application for new trial must be made at same term judgment is rendered.

§ 383. The application for a new trial must be made at the term the verdict or decision is rendered, and, except for the cause mentioned in subdivision seven of section three hundred and eighty-one, shall be within three days after the verdict or decision was rendered, unless unavoidably prevented.

Grounds must be in writing, & sustained by affidavits.

§ 384. The application must be by motion upon written grounds filed at the time of making the motion. The grounds mentioned in the second, third, and seventh subdivision of section three hundred and eighty-one, must be sustained by affidavits showing their truth, and may be controverted by affidavits.

Applications for new trials may be made after expiration of term.

§ 385. Where grounds for a new trial are discovered after the term at which the verdict or decision was rendered, the application may be made by a petition filed with the clerk not later than the second term after the discovery, on which a summons shall issue, as on other petitions, requi-

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ring the adverse party to appear and answer it, on or before the first day of the next term. The application shall stand for hearing at the term to which the summons is returned executed, and shall be summarily decided by the court. The evidence may be either by depositions, or by witnesses examined in court. But no such application shall be made more than three years after the final judgment was rendered.

ARTICLE VI.

General provisions.

§ 386. Wherever damages are recoverable, the plaintiff may claim and recover any rate of damages to which he may be entitled for the cause of action established.

Plaintiff may recover such damages as he is entitled.

§ 387. The provisions of this title respecting trials by jury, apply, so far as they are in their nature applicable, to trials by the court.

Provisions concerning jury trials applicable to trials by court

ARTICLE VII.

Time of trial.

§ 388. The clerk shall keep three separate dockets, which shall be called the "common docket," the "equity docket," and the "motion docket."

Dockets to be kept by clerk—common, equity, & motion dockets.

§ 389. On the common docket shall be entered all actions prosecuted by ordinary proceedings, in the order in which they were brought.

Common docket

§ 390. The common docket shall be made out for each term of the court; and the actions shall be set for particular days, and so arranged by the clerk that the cases set for each day shall be tried, as nearly as may be, on that day.

To be made out at each term.

§ 391. The trial of any issue of fact or assessment of damages by a jury in any case, shall be on or after the day which it is set on the docket.

Causes not to be tried before the day set on the docket.

§ 392. On the equity docket shall be entered all actions prosecuted by equitable proceedings, in the order in which they were brought.

Equity docket.

§ 393. On the motion docket may be entered any motion relating to proceedings in the court.

Motion docket.

§ 394. The entry on all the dockets shall give the name of the plaintiff and defendant, or if there are more than one, then, of the first named in the pleadings, with the words "and others" added thereto, and the names of the attorneys.

Names of parties and attorneys to be entered on dockets.

§ 395. The entry on the common docket shall also show whether or not the summons has been fully served in due time for trial, and whether or not the issues have been formed.

Other entries to be made on common docket

§ 396. The entry on the motion docket shall show the date of the entry and the object of the motion.

Entries to be made on motion docket.

§ 397. The first hour of each day of the term shall be

First hour of

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each day devoted to motions.

If not consumed, equity docket to be called.

Common docket to be called after motion hour.

All cases on common docket set for the day to be called.

Cases on equity docket to be called on third day.

Court may hear and decide issues of law on third day.

Entry on motion docket is making the motion.

When an action by ordinary proceedings stands for trial.

When an action by equitable proceedings stands for trial.

devoted to hearing motions, in which the court shall first call the motion docket, and then, upon the attorneys present, for motions.

§ 398. If the hour is not consumed in motions, the court may proceed, during the remainder thereof, to call the equity docket.

§ 399. At the expiration of the motion hour, the court, except on the third day of the term, shall proceed to the call of the common docket and the trial of the issues until the call is completed, and then to the call of the equity docket.

§ 400. On each day of the term, the court shall, immediately after the hearing of motions, call all the cases on the common docket set for that day in which the summons has been served in due time, as provided in section one hundred and sixty-one, and in which no issue of fact has been formed; and, upon failure to defend, may render judgment; and at the same time may hear and determine all issues of law in such actions, and render judgment, or give further time for hearing and deciding them.

§ 401. On the third day of each term, the court shall call all cases on the equity docket in which the summons has been served as provided in section one hundred and sixty-three; and, upon failure to defend, may give judgment.

§ 402. On the third day, the court may hear and decide all issues of law in the actions as they are called, and render judgment, or give further time for hearing or deciding them.

§ 403. The entry of a motion on the motion docket, shall be considered as making the motion.

§ 404. Actions by ordinary proceedings shall stand for trial at the first term after process has been served on the defendant as specified in section one hundred and sixty-one. An action upon contract, wherein the summons has been served in due time as provided in section one hundred and sixty-one upon part only of the defendants, shall stand for trial at the first term as to those so summoned, and may be continued as to the others for further proceedings. In other actions by ordinary proceedings, the plaintiff can only demand a trial at any term as to part of the defendants, upon his discontinuing his action on the first day of such term as to the others.

§ 405. Actions prosecuted by equitable proceedings shall stand for trial at any term, where the pleadings have been, or, by the provisions of sections one hundred and sixty-three, one hundred and sixty-four, and one hundred and sixty-five, should have been completed ninety days before the commencement of such term. But where they have not been so completed, though they should have been by those sections, the party in default as to time, shall not be entitled to demand a trial.

§ 406. Where interrogatories have been annexed to a pleading in an action by equitable proceedings, the party interrogated shall not be entitled to demand a trial, unless he has answered the interrogatories either within twenty days after they were filed, or twenty days before the term.

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When interrogatories have been filed.

§ 407. The plaintiff shall be entitled to a trial in actions by equitable proceedings, at the first term after the summons has been served on all the defendants as provided in section one hundred and sixty-three, where no issue of fact is made by the pleadings, or where the plaintiff consents that the statements of the answer may be taken as true.

When plaintiff entitled to trial by equitable proceedings.

§ 408. Where the summons in an action by equitable proceedings, has been served in due time on part only of the defendants, the plaintiff may dismiss his action as to those not summoned, and proceed to trial as to the others, in all cases where he could have maintained his action against them without joining those not summoned.

Plaintiff may dismiss as to part of defendants, in equitable proceedings.

CHAPTER 3.

Judgment.

ART. 1. *Judgment in general.*

2. *Judgment upon failure to answer.*

3. *Judgment by confession.*

4. *Manner of giving and entering judgment.*

5. *Conveyance by commissioners under a judgment.*

ARTICLE I.

Judgment in general.

§ 409. A judgment is the final determination of the rights of the parties in an action.

Judgment.

§ 410. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants.

May be given for or against some of parties.

§ 411. In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others, whenever a several judgment is proper.

May be rendered against part and continued as to others.

§ 412. An action may be dismissed, without prejudice to a future action—

An action may be dismissed without prejudice as to a future action.

1. By the plaintiff, before the final submission of the case to the jury, or to the court where the trial is by the court.

2. By the court, where the plaintiff fails to appear on the trial.

3. By the court, for the want of necessary parties.

4. By the court, on the application of some of the defendants, where there are others whom the plaintiff fails to prosecute with diligence.

5. By the court, for disobedience by the plaintiff of an order concerning the proceedings in the action.

In all other cases, upon the trial of the action, the decision must be upon the merits.

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Defendant may proceed with set-off, although plaintiff has dismissed his action.

There may be several judgments in same case.

Final judgment may be given in mortgage cases at once.

There must be a sale of mortgaged property.

Terms on sale of mortgaged property.

Damages may be assessed by court or jury on judgment for failing to answer.

Defendant may appear and confess judgment.

Debt or cause of action to be briefly stated.

Such judgment is a release of

§ 413. In any case where a set-off or counter-claim has been presented, the defendant shall have the right of proceeding to the trial of his claim, although the plaintiff may have dismissed his action or failed to appear.

§ 414. Though all the defendants have been summoned, judgment may be rendered against any of them severally, where the plaintiff would be entitled to judgments against such defendants if the action had been against them alone.

§ 415. It shall not be necessary, in any action upon a mortgage or lien, to enter an interlocutory judgment or give time for the payment of money, or for doing any other act; but final judgment may, in such cases, be given in the first instance.

§ 416. In the foreclosure of a mortgage, a sale of the mortgaged property shall, in all cases, be ordered.

§ 417. Sales of personal property or slaves made by order of court, shall be on a credit of three months; sales of real property, on a credit of not less than three nor more than twelve months, or on installments equivalent to not more than twelve months' credit on the whole, to be determined by the court. In all sales on credit, the purchaser shall execute bond, with good surety, to be approved by the person making the sale, which bond shall have the force of a judgment; and in sales of real property, a lien shall be retained on the property for its price.

ARTICLE II.

Judgment upon failure to answer.

§ 418. If the taking of an account, or the proof of a fact, or the assessment of damages is necessary to enable the court to pronounce judgment upon a failure to answer, or after a decision of an issue of law, the court may take the account, hear the proof, and, in actions founded on contract, assess the damages, or may refer the same to a commissioner, or may direct the same to be ascertained or assessed by a jury. If a jury is ordered, it shall be on or after the day on which the action is set for trial.

ARTICLE III.

Judgment by confession.

§ 419. Any person indebted, or against whom a cause of action exists, may personally appear in a court of competent jurisdiction, and, with the assent of the creditor or person having such cause of action, confess judgment therefor; whereupon, judgment shall be entered accordingly.

§ 420. The debt or cause of action shall be briefly stated in the judgment, or in a writing to be filed as pleadings in other actions.

§ 421. Such judgment shall authorize the same proceedings for its enforcement as judgments rendered in actions

regularly brought and prosecuted, and the confession shall operate as a release of errors.

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errors, and may be enforced.

ARTICLE IV.

Manner of giving and entering judgment.

§ 422. When a trial by jury has been had, judgment must be entered by the clerk in conformity to the verdict, unless it is special, or the court orders the case to be reserved for future argument or consideration.

Judgment to be entered in conformity to verdict.

§ 423. Where the verdict is special, or where there has been a special finding on particular questions of fact, or where the court has ordered the case to be reserved, it shall order what judgment shall be entered.

If verdict is special, court to order what judgment to be given

§ 424. Where, upon the statements in the pleadings, one party is entitled by law to judgment in his favor, judgment shall be so rendered by the court though a verdict has been found against such party.

If the pleadings authorize judgment it shall be given.

§ 425. If a set-off established at the trial, exceeds the plaintiff's claim so established, judgment for the defendant must be given for the excess; or, if it appears that the defendant is entitled to any other affirmative relief, judgment shall be given therefor.

May be given for defendant in cases of set-off, &c.

§ 426. In an action to recover the possession of personal property, judgment for the plaintiff may be for the delivery of the property, or for the value thereof, in case a delivery cannot be had, and damages for the detention. Where the property has been delivered to the plaintiff, and the defendant claims a return thereof, judgment for the defendant may be for the return of the property, or its value in case a return cannot be had, and damages for the taking and withholding of the property.

How judgment is to be rendered in actions for personal property.

§ 427. Where special damages are given by statute, and it appears, by the verdict of the jury or other decision of the action, that such special damages are due and recoverable by one of the parties against the other, the court shall render judgment for them; and if, in ascertaining the amount thereof, it is necessary to assess the value of any property, or amount of any debt or claim, the court may hear the proof and assess such value or amount, or have the same made by a jury.

Where special damages are recoverable judgment may be given therefor.

§ 428. The judgment must be entered on the order book, and specify clearly the relief granted, or other determination of the action.

The judgment to be entered on order book, specifying the relief granted.

§ 429. It shall not be necessary to reserve, in a judgment or order, the right of an infant to show cause against it after his attaining full age; but in any case in which, but for this section, such a reservation would have been proper, the infant, within twelve months after arriving at the age of twenty-one years, may show cause against such order or judgment.

Time for infant to appear & show cause against judgment need not be entered.

§ 430. The clerk must keep, among the records of the

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Clerk must keep a judgment book, in which to enter satisfaction.

court, a book to be called the "judgment book," in which shall be alphabetically cross-indexed all the judgments of the court, according to the surnames of the plaintiff and defendant; and if there is more than one plaintiff or defendant, then, of the plaintiff and defendant first named in the petition. It shall be so arranged that all the judgments in cases of plaintiffs whose surnames commence with the same letter, shall be together, and all of each term shall immediately succeed each other. The entry in the judgment book, must show the names of the plaintiff and defendant, and if more than one, then of the first named of each in the pleadings, with the words "and others," the term at which the judgment was entered, and a reference to the order book and page at which the judgment is to be found, with a space left for the entry of the satisfaction of the judgment.

Entry of satisfaction must be entered either by clerk or plaintiff.

§ 431. Whenever the whole judgment shall appear to be satisfied by the return of an execution, it shall be the duty of the clerk to enter in the judgment book, in the space left for that purpose, "satisfied by execution." Whenever a judgment is satisfied otherwise than upon execution, it shall be the duty of the party or his attorney to enter satisfaction in the judgment book, which shall be sufficiently done, by writing the words "satisfied in full," with the date of the entry, and the signature of the party making it; and the court may, on motion and notice, compel an entry of satisfaction to be made.

ARTICLE V.

Conveyance by commissioners.

Conveyance of real property by commissioner.

§ 432. Real property may be conveyed by a commissioner appointed by the court

1. Where, by the judgment in an action, a party is ordered to convey such property to another.

2. Where such property has been sold, under a judgment or order of the court, and the purchase money paid.

Deed must refer to judgment.

§ 433. The deed of the commissioner shall so refer to the judgment, orders, and proceedings authorizing the conveyance, as that the same may be readily found.

Conveyance by commissioner passes title.

§ 434. A conveyance made in pursuance of a judgment, shall pass to the grantee the title of the parties ordered to convey the land.

Conveyance made in pursuance to a sale passes title.

§ 435. A conveyance made in pursuance of a sale ordered by the court, shall pass to the grantee the title of all the parties to the action or proceeding.

Conveyance must be approved by the court, and indorsed on it.

§ 436. A conveyance by a commissioner shall not pass any right, until it has been examined and approved by the court, which approval shall be indorsed on the conveyance, and recorded with it.

§ 437. It shall be necessary for the conveyance to be signed by the commissioner only, without affixing the names of the parties whose title is conveyed; but the names of such parties shall be recited in the body of the conveyance.

§ 438. The conveyance shall be recorded in the office in which, by law, it should have been recorded, had it been made by the parties whose title is conveyed by it.

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Conveyance to be signed by the commissioner only.

Where to be recorded.

TITLE X.

PROCEEDINGS IN CERTAIN ACTIONS.

CHAP. 1. *In actions against absent and non-resident defendants, unknown heirs, and unknown owners of property.*

2. *In actions against steamboats.*

CHAPTER 1.

In actions against absent and non-resident defendants, unknown heirs, and unknown owners of property.

§ 439. A defendant constructively summoned, shall be allowed, at any time before judgment, to appear and defend the action; and, upon a substantial defense being disclosed, time may be given on reasonable terms to prepare for trial.

Defendant constructively summoned may appear and defend.

§ 440. The statements of the petition as against a defendant constructively summoned, and who has not appeared, except such as are for his benefit, shall not be taken as true, but are to be established by proof. But where the plaintiff files with the petition his own affidavit, stating that any of the allegations thereof recited in the affidavit are true, and known to be so by the defendant, and that they cannot be proved or shown otherwise than by his answer, so far as affiant knows or believes, such allegations, unless denied by the answer, shall be taken as true.

The effect of statements in petition against defendant constructively summoned.

§ 441. Before judgment is rendered against a defendant constructively summoned, and who has not appeared, it shall be necessary

Steps to be taken against a defendant constructively summoned, before entering judgment.

1. That an attorney be appointed, at least sixty days before the judgment is rendered, to defend for the defendant, and inform him of the action and of such other matters as may be useful to him in preparing for his defense. The attorney may be appointed by the clerk when the warning order is made, or by the court, and shall receive a reasonable compensation for his services, to be paid by the plaintiff, and taxed in the costs.

2. That a bond be executed to such defendant, by one or more sufficient sureties of the plaintiff, to the effect that, if the defendant within the period prescribed by law, shall appear, make defense, and set aside the judgment, the plaintiff shall restore to him the property taken under any attachment in the action, or under the judgment therein, the restoration of which may be adjudged, and pay to the defendant such sums of money as the court may award to him.

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Qualifications
of attorney ap-
pointed to de-
fend for absent
defendant.

If bond is not
given as requir-
ed in § 441, court
to retain control
over property.

Plaintiff may
be required to
make oath to his
claim in certain
cases.

If any fact is
disclosed favor-
able to defend-
ant, court to al-
low it.

Absent defend-
ant may appear
within five
years and have
cause retried.

If copy of judg-
ment is served
on defendant
time reduced to
one year.

Manner of
serving copy of
judgment.

§ 442. The attorney appointed pursuant to the last section, shall be a regular practicing attorney of the court; and, before an order for his compensation is made, he must make a written statement of all that he has done in the case, which shall be signed by him, and filed with the papers of the action.

§ 443. If the bond mentioned in section four hundred and forty-one is not given, the court may enter a judgment ascertaining the rights of the parties, but shall retain control over and preserve any money, or property or the proceeds thereof, which may have been attached in the action, until the expiration of the period allowed to the defendant to appear and make defense; when, if no defense is made, such money, or property or its proceeds, shall be delivered according to the judgment.

§ 444. Before rendering judgment against a defendant constructively summoned, and who has not appeared, the court may cause the plaintiff to appear personally in court, or before a commissioner, and answer under oath interrogatories concerning the matters in the petition, or any matters of defense thereto, including matters of set-off or counter-claim, and may order the examination to be reduced to writing and filed with the papers of the action.

§ 445. If, upon the examination provided in the last section, any matters of set-off or counter-claim are disclosed, the same may be adjusted and allowed in the judgment.

§ 446. Where a judgment has been rendered against a defendant or defendants constructively summoned, and who did not appear, such defendants, or any one or more of them, may, at any time within five years after the rendition of the judgment, appear in court, and move to have the action retried; and security for the costs being given, they shall be admitted to make defense; and, thereupon, the action shall be retried as to such defendants, as if there had been no judgment; and, upon the new trial, the court may confirm the former judgment, or may modify or set it aside, and may order the plaintiff to restore any money of such defendant paid to him under it, or any property of the defendant obtained by the plaintiff under it and yet remaining in his possession, and pay to the defendant the value of any property which may have been taken under an attachment in the action, or under the judgment, and not restored.

§ 447. The plaintiff may, at any time after the judgment, cause a certified copy thereof to be served on a defendant constructively summoned; whereupon, the period in which such defendant is allowed to appear and have a new trial, shall be reduced to one year after such service.

§ 448. The service of the copy of the judgment, if in this state, shall be made and proved in the same manner as the service of a summons; and if out of this state, in the man-

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ner prescribed in section one hundred and thirteen as to the service of a copy of the petition and summons, and proof thereof.

§ 449. The title of purchasers in good faith to any property sold under an attachment or judgment, shall not be affected by the new trial permitted by section four hundred and forty-six, except the title of property obtained by the plaintiff and not bought of him in good faith by others.

Purchasers of property not to be affected by re-trial.

§ 450. No lien on the property of a defendant constructively summoned, shall be created otherwise than by an attachment as provided in Chapter 3 of Title viii, or by judgment. Nor shall any other defendant be restrained from paying or delivering any money or property in his hands belonging or due to such defendant, by notice indorsed on the summons, or otherwise than by attachment or judgment.

Lien on property can only be created by attachment or judgment.

§ 451. No personal judgment shall be rendered against a defendant constructively summoned, or summoned out of this state as provided in section one hundred and thirteen, and who has not appeared in the action.

Personal judgment cannot be rendered against defendant constructively summoned.

CHAPTER 2.

In actions against steamboats.

§ 452. An action to enforce the liability, by statute, of a steamboat or other vessel for the removal of a slave, or to enforce a lien upon a steamboat for the wages of its officers or crew, or for work done upon, or materials, supplies, stores, or provisions furnished to such boat, or the liability thereof for an injury to another boat or craft, or for a trespass of its officers or crew, shall stand for trial at the first term of the court commencing not less than ten days after the service of the summons.

Actions against steamboats, when to stand for trial.

§ 453. In any action mentioned in the last section, a person made a party pursuant to the provisions of section seventy-five, may obtain an attachment in the same manner and upon the same conditions as are prescribed concerning the attachment of the plaintiff in the action.

Any person made a party in such case may obtain an attachment.

§ 454. Where, in any action mentioned in section four hundred and fifty-two, no owner of the boat has been summoned or has appeared, the statements of the petition shall not be taken as true upon the trial, but are to be established by proof.

Statements in petition must be proved.

§ 455. Where any action mentioned in section four hundred and fifty-two, is for an injury, the facts shall be tried by a jury upon such issue or issues as the court may prescribe; and, in every such case, the damages shall be assessed by a jury.

Action for injury under § 452, facts to be tried by jury.

§ 456. Where any action mentioned in section four hundred and fifty-two, is upon contract, the court may determine the facts and assess the damages or amount of recovery, or, in its discretion, may direct a trial or assessment

In actions against steamboats on contracts court may assess damages.

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Credits allowed in sale of steamboats.

by a jury, or a reference to a commissioner to ascertain the facts or make an assessment.

§ 457. Sales of steamboats or other vessels ordered in any action mentioned in section four hundred and fifty-two, shall not be upon a credit longer than six months, nor, where by installments, upon credits longer than an average of six months for the whole.

TITLE XI.

REVIVOR OF ACTIONS.

Where one of the parties dies, action may proceed in names of survivors.

§ 458. Where there are several plaintiffs or defendants in an action, and one of them dies, or his powers as a personal representative cease, if the right of action survives to or against the remaining parties, the action may proceed, the death of the party, or the cessation of his powers, being stated on the record.

If one of the parties die, action may proceed survivors.

§ 459. Where one of several plaintiffs or defendants dies, or his powers as a personal representative cease, if the cause of action does not admit of survivorship, and the court is of opinion that the merits of the controversy can be properly determined, and the principles applicable to the case fully settled, it may proceed to try the cause as between the remaining parties; but the judgment shall not prejudice any who were not parties at the time of the trial.

Action may be revived in certain cases.

§ 460. Where one of the parties to an action dies, or his powers as a personal representative cease, before the judgment, if the right of action survives in favor of or against his representatives or successor, the action may be revived, and proceed in their names.

Mode of reviving an action.

§ 461. The revivor shall be by an order of the court that the action be revived in the names of the representatives or successor of the party who died or whose powers ceased, and proceed in favor of or against them.

By whom motion to revive may be made.

§ 462. The order may be made on the motion of the adverse party, or of the representatives or successor of the party who died or whose powers ceased, suggesting his death or the cessation of his powers, which, with the names and capacities of his representatives or successor, shall be stated in the order.

If not made by consent, copy of order of revivor must be served.

§ 463. If the order is made by consent of the parties, the action shall forthwith stand revived; and, if not made by consent, the order shall be served, in the same manner as a summons, upon the party adverse to the one making the motion. And, at the first term commencing not less than ten days after such service, the party upon whom it is made may show cause against the revivor; and, if sufficient cause is not then shown, the action shall stand revived.

On return of order action to

§ 464. If ten days' notice has been given to the representatives or successor of the party who died or whose

powers ceased, of the motion by the adverse party for an order to revive the action in their names, or to the adverse party where the motion is by such representatives or successor, and due return is made of the service of the notice, the court may, if sufficient cause is not shown to the contrary, make an order reviving the action in the names of such parties; whereupon, the action shall stand revived.

§ 465. Where it appears to the court by the affidavit of the plaintiff that the representatives of the defendant, or any of them, in whose name the action is ordered to be revived, are non-residents of this state, or have left the same to avoid the service of the order, or have been absent therefrom four months, or so conceal themselves that the order cannot be served upon them, or that the names of the heirs of the defendant against whom the action is ordered to be revived, or of some of them, are unknown to the affiant, an order may be made by the court warning such representatives or unknown heirs to appear on the first day of its next term, and show cause why the action should not be revived against them. The parties so warned shall be deemed constructively served with a copy of the order of revivor ten days before the term at which they are warned to appear; and, if sufficient cause is not shown to the contrary, the action shall, at that term, stand revived.

§ 466. Upon the death of the plaintiff in an action, it may be revived in the names of his representatives to whom his right has passed. Where his right has passed to his personal representative, the revivor shall be in his name; where it has passed to his heirs, or to his devisees, who could support the action if brought anew, the revivor may be in their names.

§ 467. Upon the death of a defendant in an action wherein the right, or any part thereof, survives against his personal representative, the revivor shall be against him; and it may also be against the heirs or devisees of the defendant, or both; and where one year has elapsed after the death of the defendant and no person has qualified as his personal representative, the action may be revived and proceed against his heirs or devisees, or both.

§ 468. Upon the death of a defendant in an action for the recovery of real property only, or which concerns only his rights or claims to such property, the action may be revived against his heirs or devisees, or both, and an order therefor may be forthwith made in the manner directed in the preceding sections of this title.

§ 469. An order to revive an action against the personal representative of a defendant, or against him and the heirs or devisees of the defendant, cannot be made, unless by consent, until after six months from the qualification of the personal representative.

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stand revived,
unless good
cause is shown.

What facts au-
thorizes a warn-
ing order for re-
viving an action.

When plaintiff
dies in whose
name action to
be revived.

When defend-
ant dies how &
in whose names
action to be re-
vived.

When defend-
ant in real ac-
tion dies against
whom action to
be revived.

Six months
must elapse be-
fore order of re-
vivor can be
made against
representatives
of defendant.

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Time allowed to revive an action against the representatives of deceased defendant.

Order to revive action in favor of representatives of the plaintiff, may be made forthwith.

If the time has passed for reviving an action, it may be stricken from the docket.

Defendant may have cause stricken from the docket if the plaintiff fails to revive.

Action stands for trial at the term it is revived.

§ 470. An order to revive an action against the representatives or successor of a defendant shall not be made, without the consent of such representatives or successor, unless in one year from the time it could have been first made.

§ 471. An order to revive an action in the names of the representatives or successor of a plaintiff, may be made forthwith, but shall not be made without the consent of the defendant after the expiration of one year from the time the order might have been first made; except that, where the defendant shall also have died or his powers have ceased in the meantime, the order of revivor on both sides may be made in the period limited in the last section.

§ 472. When it appears to the court by affidavit that either party to an action has been dead, or, where he sues or is sued as a personal representative, that his powers have ceased for a period so long that the action cannot be revived in the names of his representatives or successor without the consent of both parties, it shall order the action to be stricken from the docket.

§ 473. At any term of the court succeeding the death of the plaintiff, whilst the action remains on the docket, the defendant having given to the plaintiff's proper representatives, in whose names the action might be revived, ten days' notice of the application therefor, may have an order to strike the action from the docket, and for costs against the estate of the plaintiff, unless the action is forthwith revived.

§ 474. When, by the provisions of the preceding sections, an action stands revived, the trial thereof shall not be postponed by reason of the revivor, if the action would have stood for trial at the term the revivor is complete, had no death or cessation of powers taken place.

TITLE XII.

PROCEEDINGS TO REVERSE, VACATE, OR MODIFY JUDGMENTS.

A final judgment rendered in circuit court may be reversed or modified.

May be reversed by court of appeals for errors in record.

By appeal or writ of error

§ 475. A judgment rendered or final order made in the circuit court may be reversed, vacated, or modified either by the court of appeals, or by the court in which the judgment was rendered or order made.

§ 476. A judgment or final order may be reversed or modified by the court of appeals for errors appearing in the record.

§ 477. The proceedings to obtain such reversal or modification shall be by appeal or writ of error prosecuted as prescribed by law.

§ 478. A misprision of the clerk shall not be a ground for an appeal or writ of error, until the same has been presented and acted upon in the circuit court.

§ 479. Rendering judgment before the action stood for trial according to the provisions of this code, shall be deemed a clerical misprision.

§ 480. The court in which a judgment or final order has been rendered or made, shall have power, after the expiration of the term, to vacate or modify such judgment or order—

1. By granting a new trial for the cause and in the manner prescribed in section three hundred and eighty-five.

2. By a new trial granted in proceedings against defendants constructively summoned, as prescribed in Chapter 1 of Title x.

3. For misprisions of the clerk.

4. For fraud practiced by the successful party in the obtaining of the judgment or order.

5. For erroneous proceedings against an infant, married woman, or person of unsound mind, where the condition of such defendant does not appear in the record, nor the error in the proceedings.

6. For the death of one of the parties before the judgment in the action.

7. For unavoidable casualty or misfortune, preventing the party from appearing or defending.

8. For errors in a judgment, shown by an infant in twelve months after arriving at full age, as prescribed in section four hundred twenty-nine.

§ 481. The proceeding to correct misprisions of the clerk shall be by motion, upon reasonable notice to the adverse party, or his attorney in the action. The motion to vacate a judgment because of its rendition before the action regularly stood for trial, can be made only in the first three days of the succeeding term.

§ 482. The proceeding to vacate or modify the judgment or order on the grounds mentioned in subdivisions four, five, six, seven, and eight of section four hundred and eighty, shall be by petition verified by affidavit, setting forth the judgment or order, the grounds to vacate or modify it, and the defense to the action, if the party applying was defendant. On the petition, a summons shall issue and be served and other proceedings had, as in an action by ordinary proceedings.

§ 483. A judgment shall not be vacated on motion or petition, until it is adjudged that there is a valid defense to the action in which the judgment is rendered, or, if the plaintiff seeks its vacation, that there is a valid cause of action; and where a judgment is modified, all liens and securities obtained under it shall be preserved to the modified judgment.

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Misprision of the clerk not ground of reversal.

Rendering judgment prematurely is a clerical misprision.

Causes for which a court may vacate or modify a judgment after the expiration of the term.

Motions to correct misprision of clerk, or vacate judgment.

Motion to vacate or modify judgment must be by petition & affidavit.

Certain conditions upon which judgment may be vacated or modified.

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The grounds
relied on may be
first tried.

Party seeking
to vacate a judg-
ment may ob-
tain an injunc-
tion.

Where judg-
ment is render-
ed before action
stood for trial, it
may be vacated,
though there is
no defense.

§ 484. The court may first try and decide upon the grounds to vacate or modify a judgment or order, before trying, or deciding upon, the validity of the defense or cause of action.

§ 485. The party seeking to vacate or modify a judgment or order, may obtain an injunction suspending proceedings on the whole or part thereof, which injunction may be granted by the court or any officer authorized to grant injunctions, upon its being rendered probable, by affidavit or by exhibition of the record, that the party is entitled to have such judgment, or order vacated or modified.

§ 486. Where the judgment was rendered before the action stood for trial, the suspension may be granted as provided in the last section, although no valid defense to the action is shown; and the court shall make such orders concerning the executions to be issued on the judgment, or on any replevy or forthcoming bond taken under it, as shall give to the defendant the same rights of delay that he would have had, if the judgment had been rendered at the proper time.

TITLE XIII.

EVIDENCE.

- PART 1. *Production of evidence.*
2. *Competency of witnesses.*
3. *Perpetuation of evidence.*

PART 1.

Production of evidence.

- CHAP. 1. *By whom to be produced.*
2. *Means of production.*
3. *Mode of taking the testimony of witnesses.*

CHAPTER 1.

By whom to be produced.

Who must pro-
duce evidence.

On whom bur-
then of proof
lies.

When an ex-
hibit may be
read on trial.

§ 487. The party holding the affirmative of an issue, must produce the evidence to prove it.

§ 488. The burthen of proof in the whole action lies on the party, who would be defeated if no evidence were given on either side.

§ 489. Where a writing purporting to have been executed by one of the parties, is referred to in and filed with a pleading, it may be read as genuine against such party, unless he denies its genuineness by affidavit before the trial is begun.

CHAPTER 2.

Means of production.

§ 490. The process by which the attendance of a witness

is required, is a subpoena. It is a writ directed to the sheriff, requiring him to summon the person named therein, to attend at a particular time and place, to testify as a witness. It may, when the court or the judge thereof so directs, require the witness to bring with him any book, writing, or other thing under his control, which he is bound by law to produce in evidence.

§ 491. Where the attendance of the witness is required before the court, or on the trial of an issue ordered by it, or before a commissioner directed to take evidence, the subpoena shall be issued by the clerk on the request of either party.

§ 492. Where the attendance of the witness is required for the purpose of giving his deposition, the subpoena shall be issued by an officer authorized to take the deposition.

§ 493. The service of a subpoena is made by showing the original, and delivering a copy or a ticket containing the substance thereof to the witness.

§ 494. A subpoena may be served by the sheriff, jailer, coroner, or any constable of the county, whose return thereon shall be proof of the service; it may also be served by any white person of full age, whose affidavit indorsed thereon shall be proof of the service, or the witness may acknowledge service in writing on the subpoena.

§ 495. A witness shall not be obliged to attend for examination on the trial of a civil action, except in the county of his residence or an adjoining county; nor to attend to give his deposition out of the county where he resides, or where he may be when the subpoena is served on him.

§ 496. Disobedience of a subpoena, or a refusal to be sworn or to answer as a witness, or to subscribe an affidavit or deposition when lawfully ordered, may be punished as a contempt of the court or officer by whom his attendance or testimony is required.

§ 497. Where a witness is brought before a court for contempt by disobedience of a subpoena, if it is shown that the legal fees for travel and one days' attendance were paid or tendered to him when the subpoena was served, and that he failed to attend without reasonable cause, the court may summarily order him to pay to the party, on whose behalf he was summoned, the costs occasioned to him by the disobedience of the subpoena, not exceeding twenty dollars, besides being liable for any damages occasioned by the failure to attend.

§ 498. Where a witness fails to attend in obedience to a subpoena, the court or officer before whom his attendance was required, may issue a warrant for arresting and bringing him before the court or officer, at a time and place to be fixed in the warrant, to give his testimony, and answer for the contempt. If the warrant is not for immediately bringing the witness before the court or officer, a sum shall

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How the attendance of witnesses are procured.

Clerk may issue subpoena for witnesses.

Officer authorized to take depositions may issue subpoena.

How a subpoena is served.

By whom a subpoena may be served.

Witness cannot be compelled to attend beyond an adjoining county.

Disobedience to a subpoena may be punished

Witness liable to pay costs of continuance.

Warrant may be issued to arrest witness.

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Witness may
be fined and im-
prisoned for con-
tempt.

be fixed in which the witness may give bond with surety for his appearance; and, if no sum is fixed by the court or officer, it shall be one hundred dollars.

§ 499. The punishment for the contempt mentioned in section four hundred and ninety-six, shall be by fine, not exceeding thirty dollars, and imprisonment, not exceeding twenty-four hours. But in the case of refusal by the witness to testify or be sworn, or to give a deposition, he shall continue to be imprisoned so long as he refuses; and, if the court finally adjourns before he submits, he shall remain imprisoned until the next term. The final disposition of the case in which he so refuses, shall discharge him from imprisonment.

Witness im-
prisoned may be
released by the
county judge.

§ 500. A witness so imprisoned or fined by an officer before whom his deposition is being taken, may apply to the presiding judge of the county court, who shall have power to discharge him, if it appears that his imprisonment is illegal.

Warrant of
commitment
must specify of-
fense—to whom
directed.

§ 501. Every warrant of commitment to prison issued by a court or officer pursuant to this chapter, must specify particularly the cause of the commitment; and, if it is for refusing to answer a question, such question must be stated in the warrant. And every warrant to arrest or commit a witness must be directed to the sheriff of the county where he may be, and executed in the same manner as process from the court.

Person confined
in prison, other
than sentence of
felony, may be
produced for ex-
amination.

§ 502. A person confined in any prison in this state for any other cause than a sentence for felony, may, by order of court, be required to be produced for oral examination in the county where he is imprisoned; but in all other cases, his examination must be taken by deposition.

Prisoner must
be under control
of officer during
examination.

§ 503. While a prisoner's deposition is being taken, he shall remain under the control of the officer having him in custody, who shall afford reasonable facilities for the taking of the deposition.

Witness can-
not be sued out
of his county.

§ 504. A witness shall not be liable to be sued in a county in which he does not reside, by being served with a summons in such county while going, returning, or attending in obedience to a subpoena.

CHAPTER 3.

Mode of taking the testimony of witnesses.

- ART. 1. *Affidavit.*
2. *Deposition.*
3. *General rules of examination.*

The several
modes of taking
testimony.

§ 505. The testimony of witnesses is taken in three modes:

1. By affidavit.
2. By deposition.
3. By oral examination.

§ 506. An affidavit is a written declaration under oath, made without notice to the adverse party.

§ 507. A deposition is a written declaration under oath, made upon notice to the adverse party for the purpose of enabling him to attend and cross-examine; or, upon written interrogatories.

§ 508. An oral examination, is an examination in the presence of the tribunal which is to decide the fact or act upon it, the testimony being heard by the tribunal from the lips of the witness.

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Affidavit.

Deposition.

Oral examination.

ARTICLE I.

Affidavit.

§ 509. An affidavit may be read to verify a pleading, to prove the service of a summons, notice, or other process in an action, to obtain a provisional remedy, an examination of a witness, a stay of proceedings, or a warning order, or upon a motion, and in any other case permitted by law.

For what purposes an affidavit may be read.

§ 510. Where a provisional remedy is granted upon an affidavit, and a motion is made to discharge or vacate it, the party against whom it is granted may, by written notice to the party by whom it was obtained, or by order or rule of court, require the production of the person who made the affidavit for cross-examination; whereupon, the party notified shall produce the affiant within ten days before an officer authorized to take depositions, at a time and place of which he shall give the adverse party three days' notice. If the affiant is not produced, his affidavit shall be suppressed; and if produced, he may be examined by either party.

Person who made affidavit may be required to attend for cross examination.

§ 511. An affidavit may be made out of this state before a commissioner appointed by the governor of this state to take depositions, or before a judge of a court, mayor of a city, notary public, or justice of the peace, whose certificate shall be proof of the time and manner of its being made.

Before whom an affidavit may be made out of the state.

§ 512. An affidavit may be made in this state before a judge of a court, a justice of the peace, notary public, an examiner, or a clerk of a court. Wherever, by the provisions of this code, the affidavit of the plaintiff or defendant is required to verify a pleading, to obtain a warning order, a provisional remedy, or any other order in an action, or on a motion or proceeding therein, it may, unless otherwise expressed, be made by the agent or attorney of the party, if he is absent from the county, in which case the affidavit shall state his absence, and that the affiant is his agent or attorney.

Before whom may be made in this state.

§ 513. Every affidavit shall be subscribed by the affiant, and the certificate of the officer before whom it is made, shall be written separately, following the signature of the affiant.

Affidavit must be subscribed by affiant.

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ARTICLE II.

Depositions.

- SUBDIVISION 1.
1. *When to be used.*
 2. *Officers authorized to take depositions.*
 3. *Manner of taking depositions.*
 4. *Exceptions to depositions.*
 5. *Depositions to be used in other states.*

SUBDIVISION I.

When to be used.

Depositions may be used on certain issues.

§ 514. Depositions may be used on the trial of all issues and upon all motions in actions by equitable proceedings, except where the court otherwise directs on an issue tried by a jury.

Depositions of certain persons may be used in all cases.

§ 515. They may be used on the trial of all issues in any action in the following cases :

1. Where the witness does not reside in the county where the action is pending, or in an adjoining county, or is absent from the state.

2. Where the witness is the governor, secretary of state, register, auditor, or treasurer of this state, a judge or clerk of a court, a president, cashier, teller, or clerk of a bank, a practicing physician, surgeon, or lawyer, or keeper, officer, or guard of the penitentiary.

3. Where, from age, infirmity, or imprisonment, the witness is unable to attend court, or is dead.

In what cases witnesses shall not be bound to attend in court.

§ 516. A witness shall not be compelled to attend in court for oral examination, where his deposition may be used unless he has failed, when duly summoned, to appear and give his deposition.

When parties may commence taking depositions.

§ 517. The plaintiff may commence taking depositions immediately after the service of the summons ; and the defendant, immediately after filing his answer.

Testimony may be taken *de bene esse*.

§ 518. A party may take the deposition of any witness *de bene esse*, which may be used under the circumstances prescribed in section five hundred and fifteen.

SUBDIVISION II.

Officers authorized to take depositions.

Examiners to be appointed in each county.

§ 519. The circuit judges shall appoint two, and not more than four, examiners in each county of their respective districts, who, before acting shall be sworn in open court to discharge faithfully and impartially the duties of their office.

Where examiner's office to be kept.

§ 520. An examiner's office shall be kept in or near the county seat ; and if there is more than one, the others at such place as the court may direct.

The number of offices in each county.

§ 521. There shall not be more than three examiners' offices in a county, nor more than two examiners to each office.

§ 522. All depositions taken in this state to be used in the courts thereof, shall be taken before an examiner, except

1. Where an examiner cannot be obtained in the county in which the deposition is to be taken.

2. Where the witness is unable, from age, infirmity, or imprisonment, to attend at the examiner's office, and the examiner refuses to go to him.

3. Where all the examiners of the county are interested in the action.

§ 523. In the cases mentioned in the exceptions to the last section, the depositions may be taken before a judge of a court, a justice of the peace, a notary public, or a clerk of a court.

§ 524. Where a deposition is taken before any other officer than an examiner, the cause of it being so taken shall be made to appear by an accompanying affidavit.

§ 525. It shall not be the duty of an examiner to go out of his office to take depositions, but he may take them at any place in the county for which he is appointed.

§ 526. Depositions may be taken out of this state before a commissioner appointed by the governor thereof, a judge of a court, a justice of the peace, mayor of a city, notary public, or any other person empowered by a commission directed to him by consent of the parties, or by order of the court.

SUBDIVISION III.

Manner of taking depositions.

§ 527. Depositions shall be taken upon reasonable notice to the adverse party, or upon interrogatories.

§ 528. The notice must be in writing, signed by the party giving it, or his attorney, addressed to the party on whom it is to be served, and specify the time and place of taking the deposition, and the action or proceeding in which it is to be used.

§ 529. Where the notice is to be given to the defendant, it may be served as the summons in the action is authorized to be served.

§ 530. A notice shall be deemed reasonable that allows one day for each thirty miles of distance which the party will have to travel, and one day for preparation where the distance is less than one hundred miles, and two days where it is more.

§ 531. Where a notice has been given to take a deposition at an examiner's office, but the attendance of the witness cannot be procured, owing to his age, infirmity, or imprisonment, the taking of the deposition may be adjourned to the next day, and to some other convenient place—a written notice of which shall be posted upon the front door of the examiner's office before noon of the day on which the deposition was to have been taken.

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Depositions must be taken before an examiner except, &c.

In the excepted cases may be taken before a circuit judge, &c

The cause of its being so taken to be stated.

Examiner not bound to go out of his office.

Before whom depositions may be taken out of the state.

Must be by notice or on interrogatories.

Notice must be in writing and served.

How served on defendant.

Must be reasonable.

Taking may be adjourned to another day.

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May be adjourned to another place.

Causes of adjournment must appear by affidavit.

A party may require depositions to be taken on interrogatories.

Court may permit depositions to be taken on interrogatories, in certain cases.

Interrogatories to be filed in clerk's office, & notice given.

§ 532. Where a notice has been given to take a deposition at an examiner's office, but from any cause not mentioned in the last section, the deposition cannot be taken at that office, an adjournment to the nearest convenient place shall be made—a written notice of which shall be posted upon the front door of the examiner's office for one hour before the deposition is commenced at the place to which the adjournment is made.

§ 533. Where an adjournment has been made pursuant to either of the last two sections, an affidavit as to the causes thereof, with a copy of the notice certified by the sheriff, constable, or examiner, or sworn by a private person to have been posted upon the door as therein directed, shall accompany the deposition.

§ 534. A party to whom more than three days' notice to take a deposition out of this state is given, may, by notice to the adverse party or his attorney, served in one day after the service of the first notice, require the deposition to be taken upon interrogatories.

§ 535. The court, on motion of either party, may permit depositions to be taken upon interrogatories

1. Where the ascertainment of a fact or the stating of an account is referred to a commissioner.

2. Where the party against whom the depositions are to be read, is absent from the state, and has not appointed an agent or attorney in the county where the action is pending, known to the party taking the deposition.

3. Where the parties against whom the deposition is to be read are numerous, and have not designated agents or attorneys residing in the county on whom notice may be served.

4. In cases where an infant, lunatic, or married woman is a party, by the consent of the guardian, committee, or husband.

5. In any action mentioned in section seventy-three, where the owner of the boat or vessel has not appeared.

§ 536. The interrogatories shall be filed in the clerk's office; and, if the adverse party or his agent or attorney resides in the same county, notice thereof shall be given to either of them; and, while they remain in the clerk's office, the adverse party may file cross interrogatories. If cross interrogatories are not filed, the clerk shall file the following:

1. Are you directly or indirectly interested in this action, and if interested, explain the interest you have.

2. Are all your statements in the foregoing answers made from your personal knowledge; and if not, do your answers show what are made from your personal knowledge, and what from information, and the source of that information.

3. State every thing you know concerning the subject of this action, favorable to either party.

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§ 537. The interrogatories shall remain in the clerk's office fifteen days, or, if notice is served as provided in the last section, ten days after such service, unless the cross interrogatories are sooner filed.

How long to remain in clerk's office.

§ 538. After remaining the due length of time in the clerk's office, one or more commissions, at the request of the party, shall be issued by the clerk, with copies of the interrogatories and cross interrogatories annexed, authorizing the person to whom it may be directed, to examine witnesses on them—which commission may be directed, generally, "to any officer authorized to take depositions in or out of this state."

Commissions to issue.

§ 539. Upon filing with an examiner, or other officer authorized to take depositions, a notice duly served, or a commission with interrogatories to take a deposition, it shall be the duty of such officer to issue his subpoena requiring the witness, whose deposition is desired, to appear, at a time and place to be named in the subpoena, for examination; and if the witness fails to attend, after being duly summoned, the officer may issue his warrant for arresting and bringing the witness before him, to give testimony and answer for the contempt of disobedience of the subpoena.

Officer to issue subpoenas for the attendance of witnesses.

§ 540. The officer before whom the deposition is taken shall decide, summarily, all objections to questions, but in matters of doubt shall permit the questions to be answered, noting the objection in the deposition. He shall have power to prevent insulting questions being put to a witness, and to stop a course of interrogation pursued unreasonably long, and for mere vexation and delay.

And decide objections to questions.

§ 541. The statements of the witness shall be written, in the presence of the officer taking it, either by the witness or the officer.

Deposition to be written by officer or witness.

§ 542. Where a deposition is taken upon interrogatories, neither party, nor his agent or attorney, shall be present at the examination of the witness, unless both parties are present, or represented by an agent or attorney, or unless the opposite party or his agent or attorney has been reasonably notified of the time and place of taking the depositions or the party attending has been notified by the opposite party to attend.

Who to be present when a witness is examined.

§ 543. The certificate of the officer shall state the time and place of taking the deposition, that the witness was duly sworn before he gave his testimony, and that his testimony was written, read to, and subscribed by him, in the presence of the officer: and also state by whom it was written, and which of the parties, in person or by agent or attorney, was present at the examination of the witness.

Certificate of the officer must show how and when deposition was taken.

§ 544. When the depositions are completed they shall be sealed up by the officer and directed to the clerk of the court in which the action is pending, with a note showing

Depositions to be sealed and directed to the clerk.

1851.

Fees for taking
depositions.

them to be depositions, and the style of the case in which they were taken, and either delivered to the clerk or mailed to him by the officer taking them.

§ 545. The fee allowed an officer for taking depositions shall be one dollar for each deposition, and five cents per mile for each mile that an examiner may have to travel in going to and returning from the place of the taking—the distance to be estimated from his office. But whatever is the number of depositions taken in one day for the same party in any action, the fees therefor shall not exceed three dollars.

Fees for issu-
ing subpoenas &
warrants of ar-
rest.

§ 546. For issuing a subpoena or warrant of arrest, and for summoning or arresting the witnesses, the same fees shall be paid as are allowed to clerks and sheriffs for similar services.

SUBDIVISION IV.

*Exceptions to depositions.*Deposition not
to be read unless
filed before trial.

§ 547. No deposition shall be read on a trial, unless, before the commencement thereof, it was filed with the papers of the case.

Exceptions
must be in writ-
ing.

§ 548. Exceptions to depositions shall be in writing specifying the grounds of objection, filed with the papers of the case, and noted on the record.

And filed and
noted of record.

§ 549. No exception, other than to the competency of the witness, or to the relevancy or competency of the testimony, shall be regarded, unless filed and noted on the record before the commencement of the trial.

Court to de-
cide on excep-
tions before trial.

§ 550. The court, on the motion of either party, shall decide upon the exceptions before the commencement of the trial.

Errors waived,
unless excepted
to.

§ 551. Errors of the court in its decisions upon exceptions to depositions, are waived unless excepted to.

Swearing of
jury commence-
ment of trial.

§ 552. Where the trial is by jury, the swearing of the jury shall be deemed the commencement thereof.

SUBDIVISION V.

*Depositions to be used in other states.*Mode of taking
depositions to
be used in other
states.

§ 553. A party desiring to take depositions in this state to be used in judicial proceedings in other states, may produce to a judge of the county court in the county where the witnesses reside a commission authorizing the taking of such depositions, or a notice duly served; whereupon, it shall be the duty of the judge to issue a subpoena requiring the witnesses to attend at a specified time and place for examination; and, in case of their failure to attend or refusal to be sworn or to testify, they may be punished as provided in section four hundred and ninety-nine.

ARTICLE III.

1851.

General rules of examination.

§ 554. The party who begins the case, must ordinarily exhaust his evidence before the other begins. But the order of proof shall be regulated by the court, so as to expedite the trial, and enable the tribunal to obtain a clear view of the whole evidence.

Order in which proof is to be taken.

§ 555. The court shall exercise a reasonable control over the mode of interrogation so as to make it rapid, distinct, as little annoying to the witness, and as effective for the extraction of the truth as may be; but subject to this control, the parties may put such legal and pertinent questions as they may see fit. The court, however, may stop the production of further evidence on a particular point, where the evidence upon it is already so full as to preclude reasonable doubt.

Court to exercise control in the interrogation of witnesses.

§ 556. The examination of a witness by the party producing him, is the direct examination; the examination of the same witness upon the same matter, by the adverse party, the cross-examination. The direct examination must be completed before the cross-examination begins, unless the court otherwise directs.

Examination and cross examination.

§ 557. A question that suggests to the witness the answer which the examining party desires, is a leading question. On the direct examination, leading questions are not allowed, except under special circumstances making it appear that the interests of justice require it. On cross-examination, the adverse party may put leading questions; but if he examines the witness on new matters, such examination is subject to the same rules as the direct examination.

What is a leading question, & who may ask it.

§ 558. The party producing a witness is not allowed to impeach his credit by evidence of bad character, unless it is a case in which it was indispensable that the party should produce him; but he may contradict him by other evidence, and by showing that he has made statements different from his present testimony.

Party cannot impeach his own witness.

§ 559. A witness may be impeached by the party against whom he is produced, by contradictory evidence, by showing that he has made statements different from his present testimony, or by evidence that his general reputation for truth or immorality renders him unworthy of belief, but not by evidence of particular wrongful acts, except that it may be shown by the examination of a witness, or record of a judgment, that he has been convicted of felony.

Witness may be impeached by adverse party.

§ 560. Before other evidence can be offered of the witness having made at another time a different statement, he must be inquired of concerning the same, with the circumstances of time, place, and persons present, as correctly as the examining party can present them; and if it is in writing, it must be shown to the witness, and he allowed to explain it.

Evidence proving different statements by witness cannot be given unless witness is interrogated concerning the statements.

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When evidence
of good charac-
ter of witness
admissible.

Examination
and re-examina-
tion of witness.

Witness not
under examina-
tion may be sent
from court room

Person present
may be compelli-
ed to testify.

Judge or juror
may be examin-
ed as a witness.

Writings shown
to witness may
be examined by
adverse party.

All persons
competent to
testify, except,
&c.

Persons incom-
petent to testify
in a civil action.

§ 561. Evidence of the good character of a witness is inadmissible until his general reputation has been impeached.

§ 562. A witness once examined, cannot be re-examined as to the same matter, without leave of the court. But he may be re-examined as to any new matter upon which he has been examined by the adverse party. After the examination on both sides is concluded, the witness cannot be recalled without leave of the court.

§ 563. If either party requires it, the judge may exclude from the court room any witness of the adverse party not at the time under examination, so that he may not hear the testimony of the other witnesses.

§ 564. A person present before a court or a judicial officer, may be compelled to testify in the same manner as if he was served with a subpoena.

§ 565. The judge or a juror may be called as a witness by either party, but in such case, it is in the discretion of the court to suspend the trial and order it to take place before another judge or jury; and where a party knows, at the time the jury are sworn, that a juror is to be called by him as a witness, he shall then disclose it, and the juror shall be excluded from the jury.

§ 566. Whenever a writing is shown to a witness, it may be inspected by the adverse party, and, if proved by the witness, it must be read to the jury before his testimony is closed; otherwise, it cannot be read, unless the witness is recalled.

PART 2.

Competency of witnesses.

§ 567. All persons, except those enumerated in the next section, shall be competent to testify in a civil action.

§ 568. The following persons shall be incompetent to testify:

1. Persons convicted of a capital offense, or of perjury, subornation of perjury, burglary, robbery, larceny, receiving stolen goods, forgery, or counterfeiting.
2. Infants under the age of ten years, and over that age, if incapable of understanding the obligation of an oath.
3. Persons who are of unsound mind at the time of being produced as witnesses.
4. Husband and wife, for or against each other, or concerning any communication made by one to the other, during the marriage, whether called as a witness while that relation subsisted or afterwards.
5. An attorney, concerning any communication made to him by his client in that relation, or his advice thereon, without the client's consent.
6. Persons interested in an issue, in behalf of themselves, and parties to an issue, in behalf of themselves or those united with them in the issue.

7. Negroes, mulattoes, or Indians, in any action or proceeding where a white person, in his own right, or as representative of a white person, is a party, except in actions brought to recover a penalty or forfeiture for a violation of law, against a negro, mulatto, or Indian.

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§ 569. All other objections to witnesses shall go to their credit alone, and be weighed by the jury or tribunal to which their evidence is offered.

Objections which go to credit of witnesses.

§ 570. In actions by equitable proceedings, if a party, in answering interrogatories, states new matters not responsive to the inquiries, the party interrogating may, before the trial, file his written statement under oath, concerning such new matters, which shall be read as a deposition.

In equitable proceedings new matters not responsive to interrogatories may be answered by adverse party.

§ 571. In actions by ordinary proceedings, if a party, in answering interrogatories or when introduced as a witness, states new matters not responsive to the inquiries of the adverse party, the latter shall be allowed to testify orally concerning such new matter.

Same in actions by ordinary proceedings.

§ 572. A personal representative or trustee not personally interested in the action, shall not be incompetent to testify by reason of being a party.

Personal representative may testify.

§ 573. An officer or inhabitant of a county, city, or town, or an officer, member, or trustee of a corporation or religious society, although a party to the action, shall be competent to testify in behalf of such county, city, town, corporation, or religious society.

Officer, &c., of town, &c., not incompetent witness.

PART 3.

Perpetuation of evidence.

§ 574. A person desiring to perpetuate the testimony of a witness residing in this state, may present to a circuit judge or the presiding judge of a county court an affidavit stating

Mode of perpetuating testimony.

1. That the affiant expects to be a party to an action in a court of this state, and that the expected adverse party, whose name shall be stated, is of full age, and a resident of this state.

2. That the evidence of a witness, whose name and residence, together with the facts, generally, expected to be proved, shall be stated, is believed by the affiant to be material for him.

§ 3. The obstacles preventing the action being immediately brought, where the affiant expects to be plaintiff.

§ 575. The judge may, thereupon, in his discretion, make an order for the examination of the witness.

Order for examination of witness.

§ 576. The applicant may then, after serving the expected adverse party with a copy of the affidavit and order, and with a reasonable notice of the time and place of examination, proceed to take the deposition of the witness in the manner prescribed in this code for taking depositions.

Witness may be examined.

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Notice on adverse party must be by personal delivery.

Deposition to be filed in the clerk's office.

Depositions thus taken may be read in subsequent action.

If trial in different county, copy of deposition may be read

§ 577. The copy of the affidavit and order, and the notice can be served only by a personal delivery to the expected adverse party, and the proof of such service shall be a return by a sheriff, or an affidavit of a disinterested person who made the delivery.

§ 578. The deposition, when completed, together with the affidavit, order, notice, and proof of service, shall be filed in the clerk's office of the circuit court of the county in which the deposition was taken.

§ 579. In the event of a trial between the persons named in the affidavit as expected parties, or their successors in interest, the deposition taken as above prescribed, may be read by either party, where the witness is dead or insane, or, if alive and of sound mind, where his attendance for oral examination cannot be required; and every part of it shall be subject to like objections as if taken pending the action.

§ 580. Where the trial is not in the county in which the deposition is filed, a certified copy of it and of the affidavit, order, notice, and proof of service, may be read as evidence.

TITLE XIV.

MISCELLANEOUS PROCEEDINGS.

- CHAP. 1. *Security for costs.*
 2. *Motions and notices.*
 3. *Offer to compromise.*
 4. *Submitting a controversy.*
 5. *Offer to confess judgment.*
 6. *Proceedings upon executions and distress warrants.*

CHAPTER 1.

Security for costs.

Non-resident plaintiff & corporations must give security for costs.

§ 581. A plaintiff who is a non-resident of this state, or a corporation other than a bank created by the laws of this state, before commencing an action, shall file in the clerk's office a bond of a sufficient surety to be approved by the clerk, for the payment of all costs which may accrue in the action in the court in which it is brought, or in any other to which it may be carried, either to the defendant or to the officers of the courts.

Action to be dismissed unless bond for costs is given.

§ 582. An action in which a bond for costs is required by the last section and has not been given, shall be dismissed on the motion of the defendant at any time before judgment, unless in a reasonable time to be allowed by the court, after the motion is made therefor, such bond is filed, securing all past and future costs; and the action shall not be dismissed or abated, if a bond for costs is given in such time as the court may allow.

§ 583. If the plaintiff in an action, after its institution, becomes a non-resident of this state, he shall give security for costs in the manner and under the restrictions provided in the preceding sections of this chapter.

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If plaintiff becomes non-resident he must give security for costs.

§ 584. A guardian, committee, or next friend suing for an infant or person of unsound mind, and every plaintiff suing as an assignee, except an indorsee of a bill of exchange or a promissory note placed upon the footing of a bill of exchange, when insolvent, may be required to give security for costs; and, on failure to do so in a reasonable time after it is directed by the court, upon the motion of the defendant, his action shall be dismissed.

Guardian, &c. and assignee, when insolvent, must give security for costs.

§ 585. In an action in which a bond for costs has been given, the defendant may, at any time before judgment, after reasonable notice to the plaintiff, move the court for additional security on the part of the plaintiff; and if, on such motion, the court is satisfied that the surety in the plaintiff's bond has removed from this state, or is not sufficient for the amount thereof, it may dismiss the action, unless, in a reasonable time to be fixed by the court, sufficient security is given by the plaintiff.

Additional security may be required.

§ 586. Where process is issued in an action by the direction of an attorney for a plaintiff who is required by the first section of this chapter to give security for costs, but who has failed to do so, the attorney shall be liable as surety for the costs of the action, until a bond is given; and his liability may be enforced by orders of court and by proceedings as for contempt, if they are not obeyed.

Attorney liable for costs of non-resident, &c.

CHAPTER 2.

Motions and notices.

§ 587. Every direction of a court or judge entered upon the order book, or made in writing in a civil action, and not included in the judgment, is denominated an order.

What is an order.

§ 588. An application for an order, is a motion.

Motion.

§ 589. The notices mentioned in this code shall be in writing, and may be served by a sheriff, constable, jailer, coroner, or marshal of a town or city, whose return thereon shall be proof of the service. Notices may also be served by any person not a party or interested in the action or proceeding, whose affidavit shall be proof of the service.

Notices must be in writing.

§ 590. The service of a notice shall be by giving a copy thereof to the person to whom it is directed, or, if he cannot be found at his usual place of abode, by leaving a copy there with a white person over the age of sixteen years residing in the same family with him, or, if no such white person is there, then, by affixing a copy to the front door of such place of abode. If the person to whom the notice is directed cannot be found, and has no known place of abode in this state, the notice may be served by delivering a copy to his attorney. The return of the officer, or the

Manner of serving a notice.

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affidavit of the person who served the notice, shall state the time and manner of the service; and where a copy of the notice is not given to the person to whom it is directed, the return or affidavit shall state the facts authorizing the manner of service pursued.

In some cases court may direct the manner of service.

§ 591. Where the party has no known place of abode in this state, and no attorney in the county where the action is pending, or where the parties, plaintiffs or defendants, are numerous, the court may direct the mode of serving notices and to what persons they shall be given.

Notice to an infant.

§ 592. A notice to an infant or person of unsound mind shall be served on the guardian, committee, or next friend bringing or defending the action for him.

Notice to a corporation.

§ 593. A notice to a corporation may be served in the same manner as a summons in an action against it.

Notice to husband and wife.

§ 594. Where husband and wife unite in bringing or defending an action, the service of a notice on the husband shall be deemed a service on the wife.

Notice to a person constructively summoned.

§ 595. A notice to a person constructively summoned and not appearing, shall be served on the attorney appointed to defend for him.

In what cases notice may be served on attorney.

§ 596. Where it is not otherwise specially provided in this code, a notice to a party in an action of any motion or proceeding to be made or taken therein in court, or before a judge, may be served upon such party or his attorney; but the service upon the attorney, in any such case, must be by delivering to him a copy of the notice.

If party does not reside in county notice to attorney sufficient.

§ 597. Where a party to an action does not reside in the county in which it is pending, a notice to him to take depositions may be served by delivering a copy thereof to his attorney.

Duty of sheriff and constables to serve notices.

§ 598. It shall be the duty of the sheriff, and of every constable to whom any notice in an action may be delivered for service within his county, to serve and return such notice to the party who delivered it to him. A failure to perform this duty may be punished as a disobedience of the process of the court.

CHAPTER 3.

Offer to compromise.

Defendant may, before trial offer a compromise. If plaintiff fails to recover more, he must pay defendant's costs.

§ 599. The defendant in an action for the recovery of money only, may, at any time before the trial, serve upon the plaintiff or his attorney an offer in writing to allow judgment to be taken against him for the sum specified therein. If the plaintiff accepts the offer, and gives notice thereof to the defendant or his attorney within five days after the offer was served, the offer and an affidavit that the notice of acceptance was delivered in the time limited, may be filed by the plaintiff, or the defendant may file the acceptance, with a copy of the offer verified by affidavit, and, in either case, the offer and acceptance shall be noted

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upon the record ; and judgment shall be rendered accordingly. If the notice of acceptance is not given in the period limited, the offer shall be deemed withdrawn, and shall not be given in evidence or mentioned on the trial. If the plaintiff fails to obtain judgment for more than was offered by the defendant, he shall pay the defendant's costs from the time of the offer.

§ 600. In an action for the recovery of money only, the defendant having answered, may serve upon the plaintiff or his attorney an offer in writing that, if he fails in his defense, the amount of the recovery shall be assessed at a specified sum. If the plaintiff accepts the offer and gives notice thereof to the defendant or his attorney within five days after it was served, and the defendant fails in his defense, the judgment shall be for the amount so agreed upon. If the plaintiff does not accept the offer, he shall prove the amount to be recovered, as if the offer had not been made. The offer shall not be given in evidence or mentioned on the trial. And if the amount recovered by the plaintiff does not exceed the sum mentioned in the offer, the defendant shall recover his costs incurred in the defense in respect to the question of amount, to be taxed under the direction of the court.

Defendant may, after answer, notify plaintiff that if defense is unsuccessful the recovery may be for a specified sum.

§ 601. The making of any offer pursuant to the provisions of this chapter, shall not be a cause for a continuance of an action or a postponement of a trial.

Making an offer of compromise no cause of continuance.

CHAPTER 4.

Submitting a controversy.

§ 602. Parties to a question which might be the subject of a civil action, may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which would have jurisdiction if an action had been brought. But it must appear by affidavit that the controversy is real, and the proceedings in good faith, to determine the rights of the parties. The court shall, thereupon, hear and determine the case, and render judgment as if an action were pending.

Parties may submit a matter of controversy to the court without action.

§ 603. The case, the submission, and the judgment shall constitute the record.

What constitutes the record.

§ 604. The judgment shall be with costs, may be enforced, and shall be subject to reversal, in the same manner as if it had been rendered in an action, unless otherwise provided in the submission.

Such judgment may be enforced.

CHAPTER 5.

Offer to confess judgment.

§ 605. After an action for the recovery of money is brought, the defendant may offer in court to confess judgment for part of the amount claimed, or part of the causes

After action brought, defendant may offer to confess judgment.

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involved in the action. Whereupon, if the plaintiff, being present, refuses to accept such confession of judgment in full of his demands against the defendant in the action, or having had such notice that the offer would be made, of its amount, and of the time of making it as the court shall deem reasonable, fails to attend, and, on the trial, does not recover more than was so offered to be confessed, such plaintiff shall pay all the costs of the defendant incurred after the offer. The offer shall not be deemed to be an admission of the cause of action or amount to which the plaintiff is entitled, nor be given in evidence upon the trial.

Before action brought, defendant may offer to confess judgment.

§ 606. Before an action for the recovery of money is brought against any person, he may go into the court of the county of his residence, or of that in which the person having the cause of action resides, which would have jurisdiction of the action, and offer to confess judgment in favor of such person for a specified sum on such cause of action. Whereupon, if such person having had such notice that the offer would be made, of its amount, and of the time and place of making it as the court shall deem reasonable, does not attend to accept the confession, or attending, refuses to accept it, and should afterwards commence an action upon such cause, and not recover more than the amount so offered to be confessed, he shall pay all the costs of the action; and on the trial thereof the offer shall not be deemed to be an admission of the cause of action or amount to which the plaintiff is entitled, nor be given in evidence.

CHAPTER 6.

Proceedings upon executions and distress warrants.

Officer may require an indemnifying bond before selling personal property.

§ 607. If an officer who levies or is required to levy an execution upon personal property, doubts whether it is subject to the execution, he may give to the plaintiff therein, or his agent or attorney, notice that an indemnifying bond is required. Bond may, thereupon, be given by or for the plaintiff, with one or more sufficient sureties to be approved by the officer, to the effect that the obligors therein will indemnify him against the damages which he may sustain in consequence of the seizure or sale of the property, and will pay to any claimant thereof the damages he may sustain in consequence of the seizure or sale, and will warrant to any purchaser of the property such estate or interest therein as is sold; and, thereupon, the officer shall proceed to subject the property to the execution, and shall return the indemnifying bond to the circuit court of the county in which the levy is made.

If bond is not given, officer may refuse to proceed under execution.

§ 608. If the bond mentioned in the last section is not given, the officer may refuse to levy the execution; or, if it has been levied, and the bond is not given in a reasonable time after it is required by the officer, he may restore

the property to the person from whose possession it was taken, and the levy shall stand discharged.

§ 609. The claimant or purchaser of any property, for the seizure or sale of which an indemnifying bond has been taken and returned by the officer, shall be barred of any action against the officer levying on the property, if the surety in the bond was good when it was taken. And such claimant or purchaser may maintain an action upon the bond, and recover such damages as he may be entitled to.

§ 610. Where property, for the sale of which the officer is indemnified, sells for more than enough to satisfy the execution under which it was taken, the surplus shall be paid into the court to which the indemnifying bond is directed to be returned. That court may order such disposition or payment of the money to be made temporarily or absolutely, as may be proper, in respect to the rights of the parties interested.

§ 611. The sale of personal property upon which an execution is levied, shall be suspended at the instance of any person, other than the defendant in the execution, claiming the property, who shall execute, with one or more sureties sufficient for double its value, a bond to the plaintiff in the execution, to the effect that, if it shall be adjudged that the property or any part of it is subject to the execution, he will pay to the plaintiff the value of the property so subject, and ten per cent. thereon, not exceeding the amount due on the execution, and ten per cent. thereon.

§ 612. For the purpose of taking the bond mentioned in the last section, the officer shall select three disinterested housekeepers, and administer to them an oath to make a fair appraisement of each article of the property, whose appraisement in writing shall be recited in the bond.

§ 613. The bond with the appraisement annexed thereto shall be returned to the circuit court of the county in which the levy was made.

§ 614. The party to whom the bond is executed, may move the court to which it is returned, for a judgment thereon against all or any of the obligors or their representatives, having given to them ten days' notice of the motion. The court shall direct a jury to be impaneled, and may cause such issues to be tried as it may prescribe, and direct which party shall be considered plaintiff in the issues. If the property, or any part of it, is found subject to the execution, judgment shall be rendered in favor of the plaintiff therein for the value of the property so subject, and ten per cent. thereon, not exceeding the amount due on the execution and ten per cent. thereon. An execution may be issued upon the judgment forthwith, on which the same indorsement shall be made as on the execution in virtue of which the property had been seized.

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The claimant or purchaser of property must look to the bond for indemnity.

Surplus of sale of property to be disposed of as court may direct

Sale of personal property may be suspended by the execution of a bond.

Property to be first appraised.

Bond and appraisement to be returned to the clerk's office.

Party to whom bond is given may move for judgment thereon.

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The appraisement may be contested.

Giving bond does not discharge the levy.

Provisions of preceding sections apply to proceedings on executions from justices of the peace.

And also to proceedings upon distress warrants.

By whom bond to be executed when property is levied upon under distress warrant.

§ 615. Upon the trial of the motion, either party may object that the property was not fairly appraised; and, thereupon, the jury trying the facts shall hear evidence respecting and find the value of the property.

§ 616. The giving of the bond mentioned in section six hundred and twelve, shall not discharge the levy of the execution upon the property claimed. But the officer may leave it, subject to the lien of the levy, with the person in whose possession it was found, pending the proceeding on the bond; and may, in the meantime, proceed with the execution against any other property of the defendant.

§ 617. The provisions of the preceding sections of this chapter, shall apply to proceedings upon executions issued by justices of the peace. Indemnifying bonds, in such cases, shall be returned with the executions under which they are taken, and bonds of claimants of property may be returned to any justice of the county, and motion thereon made before him on five days' notice. He shall cause a jury to be impaneled to find whether the property was subject to the execution, subject to an appeal where the value of the property exceeds ten dollars.

§ 618. The provisions of the preceding sections of this chapter, shall also apply to proceedings upon distress warrants levied or about to be levied upon personal property claimed by any person other than the tenant, his assignee, or under-tenant. In every such case the bond of the claimant of the property, where it exceeds the value of fifty dollars, shall be returned to the circuit court of the county, and the motion thereon made in that court; and, where the value of the property does not exceed fifty dollars, to some justice of the peace of the county, and the motion may be made before him. Indemnifying bonds in such cases shall be returned with the warrants under which they were taken.

§ 619. Where an officer levies or is about to levy a distress warrant upon any property, the tenant, his assignee, or under-tenant may execute, with one or more sufficient sureties to be approved by the officer, a bond to the party in whose favor the warrant issued, to the effect that he will pay to such party the amount of the rent specified in the warrant, with ten per cent. thereon, if the property is of the value of the rent so specified; or, if it is of less value, that he will pay to such party the value thereof, and ten per cent. thereon. For the purpose of taking this bond, the officer shall cause the property to be appraised as provided in section six hundred and twelve. The appraisement shall be annexed and referred to in the bond. Upon the giving of the bond, the levy, if one is made, shall be discharged, and the bond and warrant shall be returned to some justice of the peace of the county, where the amount claimed does not exceed fifty dollars; and, where it does

exceed that sum, to the clerk's office of the circuit court of the county.

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§ 620. The party to whom the bond is executed, may move the justice of the peace or the court for a judgment thereon, against all or any of the obligors or their representatives, having given to them five days' notice of the motion. The defendants may make defense, upon the ground that the distress was for rent not due in whole or in part, or was otherwise illegal; or, if property was levied upon, that it was by statute exempt from the levy.

Party to whom bond is given may move justice of the peace for judgment.

§ 621. Where the motion is made before a justice of the peace, he shall cause a jury to find the facts, subject to an appeal where the amount exceeds ten dollars.

Facts to be tried by a jury.

§ 622. Where the motion is made in court, it shall direct a jury to find the facts.

Where motion made in court, jury to be impaneled.

§ 623. If the judgment is against the defendants, it shall be for the rent due, and ten per cent. thereon, not exceeding the amount secured by the bond. An execution may be issued forthwith.

Judgment may be rendered for rent and ten per cent.

§ 624. Where the tenant, his assignee, or under-tenant contends that a part of the rent is not due, he may suspend the distress warrant for such part, by giving bond, with a surety, for it, upon which proceedings may be taken, as prescribed in the preceding sections.

If part of rent is not due, that part may be suspended by giving bond.

§ 625. Trials by juries summoned by sheriffs or other officers, of the right of property taken by them under execution or distress warrant, are abolished.

Trials of right of property by juries abolished.

CHAPTER 7.

Proceedings by sureties.

§ 626. A surety may maintain an action against his principal, to compel him to discharge the debt or liability for which the surety is bound, after the same has become due.

A surety may maintain action against principal.

§ 627. A surety may maintain an action against his principal, to obtain indemnity against the debt or liability for which he is bound, before it is due, whenever any of the grounds exist upon which, by the provisions of Chapters 1 and 3 of Title vii, an order may be made for arrest and bail, or for an attachment.

May maintain it to obtain indemnity.

§ 628. In such action, the surety may obtain any of the provisional remedies mentioned in Title vii, upon the grounds and in the manner therein prescribed.

Remedies in such actions.

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TITLE XV.

GENERAL PROVISIONS APPLICABLE TO THE WHOLE CODE.

CHAP. 1. *Process.*2. *Duties of clerks.*3. *Duties of sheriffs.*4. *Miscellaneous provisions.*5. *Provisions respecting existing actions.*6. *Provisions respecting special proceedings.*

CHAPTER 1.

*Process.*When summons
may issue.

§ 629. No summons or order for a provisional remedy shall be issued by the clerk in any action before the plaintiff's petition therein is filed in his office.

No objection
that process or
bond is dated on
a holiday.

§ 630. It shall be no objection to any process, writ, summons, affidavit, or order for a provisional remedy that it was issued, made, or is dated on a holiday; nor shall it be an objection to any bond given by or for any party to an action, or taken by an officer in the course of the same, that it was made or is dated on any such day.

Process may
issue on a holi-
day.

§ 631. A summons or order for a provisional remedy may be issued on a holiday, where an affidavit of the plaintiff or some other person is made, to the effect that, unless it is issued on that day, there is reasonable cause to believe that it cannot be executed.

Attachment
may be executed
on a holiday.

§ 632. An order of attachment, or for the delivery of property, may be executed on a holiday, when the officer having the process believes, or an affidavit of the plaintiff or some other person is made to the effect that the affiant believes, that the property is about to be concealed or removed, or that the process cannot be executed after such holiday.

Summons, &c.,
may be executed
on a holiday.

§ 633. A summons, subpoena, notice, or order of arrest or of injunction may be executed on a holiday, where the officer having the process believes, or an affidavit of the plaintiff or some other person is made to the effect that the affiant believes, that the process cannot be executed after such holiday.

Service of pro-
cess may be on
muster & elec-
tion days.

§ 634. The defendant shall have no privilege of exemption from the service of the process mentioned in the last section, except from an arrest, by reason of his attendance at any muster, election, or order of survey, or as a witness at any court or other place.

To whom pro-
cess to be direct-
ed where sheriff
is interested.

§ 635. An order for a provisional remedy, or any other process, in an action wherein the sheriff is a party, or is interested, shall be directed to the coroner, or, if he is interested, to the jailer. If both these officers are interested, the process shall be directed to and executed by any constable of the county.

Court may make
a special ap-
pointment.

§ 636. The court, for good cause may appoint a person to serve a particular process or order, who shall have the same power to execute it which a sheriff has. The person

may be appointed on the motion of the party obtaining the process or order, and the return must be verified by his affidavit. He shall be entitled to the fees allowed to sheriffs for similar services.

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CHAPTER 2.

Duties of clerks.

§ 637. The clerk shall indorse, upon every paper filed in an action, the day of filing it; and upon every order for a provisional remedy, and upon every bond taken thereunder, the day of its return to his office.

Clerk—time of filing papers & making orders.

§ 638. He shall, upon the return of every summons served, enter upon the docket the name of the defendant or defendants summoned, and the day of the service upon each one. The entry shall be evidence of the service of the summons, in case of the loss thereof.

To indorse on docket name of the defendant's summoned.

§ 639. He may administer any oath or take any affidavit required or permitted in the progress of an action.

Clerk may administer oaths.

§ 640. He shall prepare in a proper manner every bond to be taken by or given before him or his court.

Prepare bonds.

§ 641. He shall refuse any surety offered in a bond to be taken by him, who is, in his opinion, insufficient.

May refuse surety offered.

CHAPTER 3.

Duties of sheriffs.

§ 642. The sheriff shall indorse, upon every summons, order of arrest or for the delivery of property, or of attachment or injunction in his hands, the day and hour it was received by him.

Sheriff to indorse day and hour he receives process.

§ 643. A sheriff having an order of attachment, or for the delivery of property, may enter any building or inclosure containing the property, to take it; and, if necessary for this purpose, may break the building or inclosure, having first publicly demanded the property.

May enter building to serve process.

§ 644. A sheriff having an order of arrest, may enter any house or inclosure in which the party to be arrested may be, to arrest him; and, if necessary for this purpose, may break the house or inclosure, after having informed any person therein of his object, or, where no person appears to whom such information can be given, after having publicly demanded the person to be arrested, and, in either case, after having given sufficient time for the house or inclosure to be opened.

May break house or inclosure.

§ 645. It shall not be a sufficient return of any process, that the officer was kept off by force from executing it.

Kept off by force not good return.

CHAPTER 4.

Miscellaneous provisions.

§ 646. Any duty enjoined by this code upon a ministerial officer, and any act permitted to be done by him, may be performed by his lawful deputy.

Duties may be performed by deputy.

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A majority
may act.

Affirmation
sufficient.

Mode of com-
puting days.

A good bond
may be executed
in place of a de-
fective one.

Person offered
as surety may be
required to make
oath.

Qualifications
of sureties.

Action for dis-
covery.

Successive ac-
tions may be
maintained.

Ne exeat abol-
ished.

By whom pro-
visional remedy
may be granted.

Title two not
to apply to cer-
tain cases.

One of several
parties may ver-
ify petition.

§ 647. An authority conferred upon three or more persons, may be exercised by the majority of them; and a majority of three or more persons may do any act directed to be performed by them.

§ 648. Wherever an oath is required by this code, the affirmation of a person conscientiously scrupulous of taking an oath, shall have the same effect.

§ 649. Where a certain number of days is required to intervene between two acts, the day of one only of the acts may be counted.

§ 650. When any bond provided for by this code is adjudged to be defective, a new and sufficient one may be executed in such reasonable time as the court may fix, with the same effect as if originally executed.

§ 651. The ministerial officer whose duty it is to take a surety in any bond provided for by this code, shall have the right to require the person offered as surety to make affidavit of his qualification, which affidavit may be made before such officer. The taking of such an affidavit shall not exempt the officer from any liability to which he might otherwise be subject for taking insufficient security.

§ 652. The surety in every bond provided for by this code, must be a resident of this state, and worth double the sum to be secured, beyond the amount of his debts, and have property liable to execution in this state equal to the sum to be secured. Where there are two or more sureties in the same bond, they must, in the aggregate, have the qualification prescribed in this section.

§ 653. No action to obtain a discovery shall be brought, except in aid of some other action pending when this code takes effect.

§ 654. Successive actions may be maintained upon the same contract or transaction, whenever, after the former action, a new cause of action has arisen therefrom.

§ 655. The writ of *ne exeat*, as a remedy in a civil action, is abolished.

§ 656. Where, by the provisions of this code, a provisional remedy may be granted by the judge of the court in which the action is brought, or any circuit judge, or by the presiding judge of the county court, it may be granted by any two justices of the peace of the county.

§ 657. The provisions of Title 2 of this code, shall not apply in the following cases:

1. In the case of a continuing and subsisting trust.
2. To an action by a vendee of real property, in possession thereof, to obtain a conveyance of it.

§ 658. Where there are several plaintiffs, the verification of the petition or reply may be made by any one of them; and, where several defendants unite in the same answer and defense, the verification may be by either of them.

§ 659. In an action where an attachment has been granted, the execution by or for the defendant of a bond whereby the attachment is discharged, or the possession of the attached property is obtained or retained by him, shall be an appearance of such defendant in the action.

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Execution of attachment bond; appearance.

§ 660. In an action against a steamboat or other vessel, the execution by or for an owner of the boat of a bond whereby the attachment is discharged, or the possession of the boat is obtained or retained by him, shall be an appearance of such owner as a defendant in the action.

Same in a steamboat case.

§ 661. Rights of civil action and suit arising under existing laws, may be prosecuted in the manner provided by this code. If a case shall ever arise in which an action for the enforcement or protection of a private right, or the redress or prevention of a private wrong, cannot be had under this code, the practice heretofore in use may be adopted, so far as is necessary to prevent a failure of justice.

Right of action under existing laws may be enforced by this code.

CHAPTER 5.

Provisions respecting existing actions.

§ 662. The provisions of this code do not apply to proceedings in actions or suits pending when it takes effect. They shall be conducted in all respects as if it had not been adopted.

Code does not apply to existing suits.

§ 663. Where, by the existing laws, a party would be entitled to proceed by bill in chancery to injoin a judgment or other proceeding at law in an action brought before this code takes effect, he may proceed in such case for relief as if this code had not been adopted, and its provisions shall not affect his case.

Bills in chancery may be filed before the code takes effect.

CHAPTER 6.

Provisions respecting special proceedings.

§ 664. The provisions of this code do not affect the laws regulating actions, suits, or proceedings in the following cases:

Cases to which this code do not apply.

1. For the administration and settlement of the estate of a deceased person.
2. To establish or set aside a will.
3. For alimony or divorce.
4. For the sale of the real property and slaves of an infant.
5. Motions, authorized by statute, of a surety against his principal or co-surety.
6. Motions, specially authorized by statute, to obtain a judgment or final order.
7. Appeals from justices of the peace and county courts and writs of error to county courts.
8. *Caveats.*
9. Arbitrations and awards.

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10. A traverse on a writ of forcible entry and detainer, or a traverse on any other proceeding.

11. *Scire facias* to repeal or vacate a patent or charter.

12. Proceedings on writs of *habeas corpus*, *mandamus*, *quo warranto*, prohibition, and *ad quod damnum*.

13. Civil proceedings in behalf of the commonwealth, specially authorized by statute.

TITLE XVI.

THE COURTS TO WHICH THIS CODE APPLIES.

CHAP. 1. *General court.*

2. *Circuit courts.*

3. *Louisville chancery court.*

CHAPTER 1.

General court.

§ 665. The provisions of this code shall regulate actions and proceedings in the general court.

§ 666. Wherever, by the provisions of this code, any process is to be directed to the sheriff of the county in which an action or proceeding is brought, or any act is required or permitted to be done by him, the word sheriff shall, in reference to any action or proceeding in the general court, be taken to mean the sergeant thereof.

CHAPTER 2.

Circuit courts.

§ 667. The provisions of this code shall regulate proceedings in civil cases in the circuit courts of this commonwealth, subject, in respect to the Jefferson circuit court, to the modifications made in this chapter, which apply to that court alone.

§ 668. Where by the provisions of Title 1 an action commenced in the Jefferson circuit court by ordinary proceedings, is changed into equitable proceedings, the court shall order it to be transferred to the Louisville chancery court. Whereupon, the papers in the action, with a copy of the order for its transfer, shall be delivered by the clerk to the clerk of the chancery court, who shall place the case upon the docket of that court, and the action shall proceed as if originally brought therein.

§ 669. Where by the provisions of section nine, any issue arising in an action is to be tried as in cases of equitable proceedings, without a change of the whole action into such proceedings, the trial of such issue shall be by the Jefferson circuit court: and where all the issues are such as before the adoption of this code were cognizable in chancery, and the defendant elects to have them all tried as in

Code applies to general court.

Sheriff means sergeant in general court.

Provisions of code apply to circuit courts.

Cases of equitable proceeding in Jefferson to be transferred to chancery court.

Ordinary proceedings to be tried in circuit court, equitable in chancery court.

cases of equitable proceedings, the court shall order the action to be transferred to the Louisville chancery court; whereupon, the same proceedings shall be had as are directed in the last section.

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§ 670. The provisions of sections 400, 401, and 402, shall not apply to the court.

Sections not applicable.

§ 671. On each day of the term, the court shall, immediately after hearing the motions, call all the cases on the common docket for that day, in which the summons has been served in due time, as provided in section 161, and in which no issue of fact has been formed; and upon failure to defend, may render judgment.

Order of calling docket.

§ 672. The court may hear and decide all issues of law in the actions as they are called, and render judgment, or give further time for hearing and deciding them.

Court to decide issues of law.

§ 673. An action by ordinary proceedings shall stand for trial at the first term after the process has been served on the defendant, as provided in section 161. An action upon contract, wherein the summons has been served in due time, as provided in that section, upon part only of the defendants, shall stand for trial at the first term as to those so summoned, and may be continued as to the others for further proceedings. In other actions by ordinary proceedings, the plaintiff can only demand a trial as to part of the defendants, upon his discontinuing his action as to the others.

When action stands for trial.

CHAPTER 3.

Louisville chancery court.

§ 674. The jurisdiction of the Louisville chancery court is not affected by this code, except as provided in section 669. The proceedings in that court shall conform to the provisions of this code respecting actions by equitable proceedings, subject to the modifications contained in this chapter, which are applicable to that court alone.

Jurisdiction of Louisville chancery court not affected by code.

§ 675. Where by the provisions of Title 1 an action commenced in the Louisville chancery court by equitable proceedings, is changed into ordinary proceedings, the court shall order it to be transferred to the Jefferson circuit court; whereupon, the papers in the action, with a certified copy of the order for its transfer, shall be delivered by the clerk to the clerk of the Jefferson circuit court, who shall place the case upon the docket of that court, and the action shall proceed as if originally brought therein.

Cases in chancery court may be transferred to circuit courts.

§ 676. There shall be no stated terms of the court. It shall be deemed to be always open for the transaction of business; and may be held at any time by the judge thereof, or in case of his sickness or unavoidable absence, by the judge of the judicial district which includes the county of Jefferson.

Chancery court always open.

§ 677. The summons in an action shall be directed to the marshal of the court, or at the request of the plaintiff, to

To whom summons may be directed.

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	the sheriff, coroner, or jailer of Jefferson county; and shall be made returnable to any day, at the option of the plaintiff, not less than ten nor more than sixty days after its date.
When defendant to answer.	§ 678. The time fixed in the summons for the defendant to answer shall be twenty days after the service thereof, if in Jefferson county, and thirty days if elsewhere in the state.
Warning order.	§ 679. A warning order shall warn the defendant to answer within sixty days after the time of making the order.
Is constructive service.	§ 680. A defendant against whom a warning order is made, shall be deemed to be constructively summoned thirty days after the making of the order, and the action shall proceed accordingly.
When defense must be made.	§ 681. The defense to an action must be filed within twenty days after the service of the summons in Jefferson county, or within thirty days after such service elsewhere in the state. Where the service is out of this state, as provided in section 113, the defense must be filed within sixty days thereafter.
When plaintiff must reply to set-off, &c.	§ 682. If the answer contains a counter-claim or set-off, the plaintiff shall reply within twenty days after the answer is filed.
Filing pleadings in clerk's office sufficient.	§ 683. The filing within the proper time of an answer or reply, in the clerk's office, and causing it to be noted upon the clerk's memorandum book and rule docket, shall be equivalent to a filing in court. Exhibits may be filed in the same manner in the clerk's office.
When interrogatories are to be answered.	§ 684. Where interrogatories are annexed to a petition, they shall be answered at the time the party is required to answer the petition; where they are annexed to an answer or reply, they shall be answered within twenty days after notice of the filing thereof is given to the adverse party or his attorney.
Amendment not to be taken as true.	§ 685. No amendment of a petition or answer containing a counter-claim or set-off, in a material part, shall, without consent, be taken as true at the trial, unless the adverse party shall have had such reasonable notice of the filing thereof as the court may by rule prescribe.
Three dockets to be kept.	§ 686. The clerk shall keep three separate dockets, which shall be called the "rule docket," the "trial docket," and the "motion docket."
Rule docket.	§ 687. The rule docket shall be kept, and all actions shall be placed and shall remain thereon without continuance, as authorized by the existing law, until they are put upon the trial docket.
Trial docket.	§ 688. On the trial docket shall be entered the actions that are ready for trial. Where further time is allowed by the court to plead or prepare for trial in an action, it may be remanded to the rule docket.
Motion docket.	§ 689. On the motion docket may be entered any motion relating to proceedings in the court.

§ 690. The cases upon the trial and motion dockets shall be called at such times as the court, with a view to the dispatch of business, may deem to be proper.

§ 691. Where the summons has been served in Jefferson county twenty days, or elsewhere in the state thirty days, or out of the state sixty days, or where a regular warning order has expired, and no defense is made, the plaintiff may place the action upon the trial docket.

§ 692. Where defense is made by an answer, which the plaintiff consents may be taken as true, the action may be immediately placed upon the trial docket.

§ 693. Where defense is made by an answer, which the plaintiff does not consent may be taken as true, the action may be placed on the trial docket thirty days after the pleadings have been, or by the provisions of sections 681, 682, should have been completed. But where they have not been so completed, though they should have been by those sections, the party in default as to time, shall not be entitled to place the action on the trial docket.

§ 694. Where interrogatories are annexed to a pleading, the party interrogated shall not be entitled to place the action on the trial docket, within twenty days after he has answered the interrogatories.

§ 695. An application for a new trial, except for the cause mentioned in the seventh subdivision of section 381, shall be made within fifteen days after the decision is rendered; and where the application is for the cause mentioned in that subdivision, it shall be made within sixty days after the decision.

§ 696. Where grounds for a new trial are discovered after the expiration of sixty days from the decision, the application may be made as provided in section 385, within two months after the discovery. The proceedings thereupon shall be such as are directed in that section, and subject to the limitation therein prescribed.

§ 697. No execution shall be had of any judgment within fifteen days after its rendition, unless otherwise ordered by the court.

§ 698. An appeal may be granted within fifteen days after a final judgment or order.

§ 699. The power which the court has heretofore had over its orders and decrees during the term in which they are rendered, shall continue as to any final judgment or order for sixty days after its rendition.

§ 700. The proceedings authorized by section 480, and the succeeding sections of Title 12, may be had in reference to any judgment or final order of the court after the expiration of sixty days from its rendition. The proceedings upon the petition authorized by section 482, shall be as in an action by equitable proceedings. A motion to vacate a judgment, because of its rendition before the action could

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Call of docket.

When cases may be placed on trial docket.

If answer is true, case may at once be placed on trial docket.

When cases may be placed on trial docket.

Where interrogatories are annexed to pleadings.

Application for new trial to be made within fifteen days.

In some cases may be made two months after discovery of grounds.

When execution may issue.

Appeal may be granted.

Power of court over judgments to continue sixty days after rendered.

Certain proceedings to be had according to preceding sections.

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When party
may show cause
against order of
revivor.

Order to re-
vive as in § 465
must allow sixty
days for appear-
ance.

Court to ap-
point a commis-
sioner.

Commissioner
to take an oath.

Appoint depu-
ties.

Administer
oaths.

Depositions—
interrogatories.

Manner of ta-
king and certifi-
ing depositions.

regularly be placed upon the trial docket, can only be made within three months after its rendition.

§ 701. Within thirty days after the service of an order to revive an action, as provided in section 463, the party upon whom it is made, may show cause against the revivor, and if sufficient cause is not shown within that time, the action shall stand revived.

§ 702. An order warning parties to appear and show cause why an action should not be revived, in the cases mentioned in section 465, shall allow not less than sixty days for their appearance; and if, within the period mentioned in the order, sufficient cause is not shown to the contrary, the action shall stand revived.

§ 703. A commissioner shall be appointed by the court, and shall hold his office during its pleasure. He shall discharge the duties of the present masters of the court, and may receive the fees therefor which are authorized to be taken by them. He shall perform such other duties as are provided by this code, or, as by rules and orders pursuant thereto, may be directed by the court.

§ 704. Before entering upon the performance of his duties, the commissioner shall take, in open court, the oath prescribed by the existing laws for a master of the court.

§ 705. The commissioner may, with the approbation of the court, appoint one or two deputies, who shall, in open court, take an oath to perform faithfully their duties.

§ 706. The commissioner may administer any oath and take an affidavit directed or permitted in an action or proceeding in the court.

§ 707. The judge of the court may require all depositions to be taken upon interrogatories filed in the clerk's office.

§ 708. Depositions to be read in the court shall be taken and certified in the manner, and by the officers directed, by the provisions of this code, subject to the following modifications, viz :

1. Depositions in the city of Louisville shall be taken before the commissioner of the court.

2. Notice to the adverse party of the filing of interrogatories shall not be necessary. The court shall by rules prescribe days for the filing of interrogatories, and the time they shall remain in the clerk's office.

3. A deposition may be taken by the commissioner of the court without a commission therefor.

4. Where a deposition is taken upon interrogatories, neither party, nor his agent or attorney, shall be present at the examination of the witness, unless the adverse party or his agent or attorney is present, or unless such party or his attorney has had reasonable notice of the time and place of taking the deposition : But a party notified to attend may be present, although the party who gave the notice is not.

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5. Where it appears by the certificate of the officer, that one only of the parties was present at the examination of the witness, the reason for his being permitted to be present, shall be stated, and, where a notice to attend has been given, the evidence thereof shall be annexed to the certificate.

6. Depositions to be read in the court, may be taken by the commissioner at any place in the state.

§ 709. Sales of personal property made by order of the court shall be upon such credits as the court may direct, not exceeding four months; but the court may, in its discretion in a special case, direct a sale of such property to be for cash. Sales of real property shall, unless by consent of the parties, be upon a credit of not less than three nor more than twelve months, or on instalments equivalent to not more than twelve months credit on the whole; but the court may direct a sale of real property over the value of three thousand dollars to be on a credit, or if on instalments, an average of credits not exceeding two years.

Credits upon which sales of property may be made.

§ 710. Sales of property in Louisville or the county of Jefferson, by order of the court or under execution from it, if not otherwise specially directed by the court, shall be made at the court house door, after ten days' notice by printed advertisements posted at that and such other places as the court may, by rule, direct. The court may, by rule from time to time, prescribe a day or days of the week, and the hours of the day within which all sales shall be made.

Sales of property in Louisville and Jefferson county to be made at court house door.

§ 711. In the sale of a small portion of real estate, if the defendant does not require less than the whole to be sold, where less will produce the debt, the officer making the sale may exercise his discretion, with a view to the interest of the defendant, whether to sell the whole or less than the whole, as he may or not think it advantageously susceptible of division. The officer shall be allowed no commission for any excess over the amount of the debt, and an abuse of his discretion either way, shall be a sufficient cause to set aside the sale.

Manner of selling real estate.

§ 712. The bonds of the purchasers of property sold by order of the court, shall bear interest from the day of sale, and shall be made payable to the "clerk of the Louisville chancery court," and shall be signed or acknowledged before, and attested by the officer who made the sale. Proceedings on such bonds may be had in the name of the "clerk of the Louisville chancery court," without using the name of the clerk for the time being, at the instance, as relator, of any person interested, he being responsible for the costs. Performance of such bonds may be summarily enforced by orders of court, and by proceedings as for contempt if they are not obeyed. The bonds shall have the

To whom bonds of purchasers to be made payable and their effect.

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Objection to
bail.

Indemnifying
bond.

Bond to sus-
pend sale to be
returned with
execution.

Process to other
counties to be
executed.

Sheriff may
mean Marshal
Louisville chan-
cery court.

Priority of
debts incurred
by receiver or
depository.

Action on of-
ficial bond of
clerk or mar-
shal.

Court may pre-
scribe rules of
proceedings in
court.

Certain words
in code have dif-
ferent meanings.

force of judgments, and, upon executions thereon, no replevy shall be allowed, and sales shall be for cash.

§ 713. An objection to bail for insufficiency, can only be made by motion within ten days after the return of the bail bond.

§ 714. An indemnifying bond given pursuant to section 607, to obtain a levy upon, or sale of property, in Jefferson county, under an execution from the court, shall be returned to it.

§ 715. A bond pursuant to section 611, to suspend a sale of property levied upon in Jefferson county, under an execution from the court, shall be returned to it, and the proceedings authorized in section 614, may be had therein.

§ 716. Process of the court to other counties may be issued and directed, and shall be executed and returned, as such process from a circuit court.

§ 717. Wherever, by the provisions of this code, any process is to be directed to the sheriff of the county in which an action or proceeding is brought or is pending, or any act is required or permitted to be done by him, the word 'sheriff' shall, in reference to any action or proceeding in the Louisville chancery court, be taken to mean the marshal thereof. And where the marshal is a party to or interested in any action or proceeding in the court, any process therein may be directed to the sheriff of Jefferson county, or if he is interested, to the coroner or jailer thereof.

§ 718. A debt incurred by any person or corporation, as receiver or depository of money paid into the court, shall rank with debts due to the commonwealth, and shall have priority over other debts owing by such receiver or depository, and precedence over any mortgage or lien upon his property made after his appointment. Accounts shall be kept of all moneys paid into the court, and with every receiver or depository of such moneys, by the clerk or commissioner, as may be directed by the court.

§ 719. An action upon the official bond of the clerk or marshal of the court, may be brought and prosecuted therein as other actions of which it has cognizance, subject to the right of the defendant to a trial by jury.

§ 720. The court may, from time to time, prescribe and enforce rules for the orderly conduct and dispatch of the business of the court and of its officers, pursuant to the provisions of this code and of the existing laws not inconsistent therewith.

TITLE XVII.

RULES OF CONSTRUCTION OF THIS CODE.

§ 721. Words used in this code in the past or present tense, include the future as well as the past and present; words used in the masculine gender include the feminine

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and neuter; the singular number includes the plural, and the plural, the singular; the word person includes a corporation as well as a natural person; writing includes printing or printed paper; signature or subscription includes mark, when, the person cannot write, his name being written near it, and witnessed by a person who writes his own name as a witness.

§ 722. The terms explained in the following sections of this chapter have, in this code, the significations attached to them, unless it is otherwise apparent from the context.

Terms—significations.

§ 723. The words "real property" mean lands, tenements, and hereditaments.

Real property.

§ 724. The words "personal property" include slaves, money, goods, chattels, things in action, and evidences of debt.

Personal property.

§ 725. The word "property" includes property, real and personal.

Property.

§ 726. The word "clerk" means the clerk of the court in which the action is brought or is pending, or in which the proceeding is had; and the words "clerk's office" mean his office.

Clerk.

§ 727. The words "presiding judge of the county court" signify the presiding judge of the county court of the county in which the action is brought or is pending, or in which the proceeding is had.

Presiding judge of county court.

§ 728. The word "sheriff" means the sheriff of the county in which the action is brought or is pending, or in which the proceeding is had, or to which the process is directed; and where it is used in connection with any process or order, or the execution thereof, or of any ministerial act, shall be taken to signify also any other officer to whom the process or order may be directed, and who may be acting under it, or by whom the ministerial act may be performed.

Sheriff.

§ 729. The words "coroner," "justice," "jailer," and "constable," mean officers of the county in which the action is brought or is pending, or in which the proceeding is had, or to which the process is directed.

Coroner, justice, jailer, constable.

§ 730. The words "personal representative" signify the executor or administrator of a deceased person, or the officer or other person appointed to take charge of his estate.

Personal representative.

§ 731. A "foreign corporation" is one created by the laws of some other state or country.

Foreign corporation.

§ 732. The words "other country" signify any part of the world out of this state.

Other country.

§ 733. The words "United States" embrace every state in the union, all the territories thereof, and the District of Columbia.

United States.

§ 734. The words "person of unsound mind" include every person who is an idiot, lunatic, or deranged.

Person of unsound mind.

§ 735. The word "oath" includes affirmation in any case in which it may be substituted for an oath, and in like cases the word "sworn" includes "affirmed."

Oath.

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Month.
Process.

Writ.

Provisions of
code to be libe-
rally construed.Laws incon-
sistent with this
code are repeal-
ed.

§ 736. The word "month" means calendar month.

§ 737. "Process" is a writ or summons issued in the course of judicial proceedings.

§ 738. "Writ" is an order or precept in writing, issued by a court, clerk, or judicial officer.

§ 739. The rule of the common law that statutes in derogation thereof are to be strictly construed, shall not be applied to this code. The provisions of this code, and all proceedings under it, shall be liberally construed, with a view to promote its object, and to assist the parties in obtaining justice.

§ 740. All statutes and laws heretofore in force in this state in any case provided for by this code or inconsistent with its provisions, are hereby repealed and abrogated; but this repeal does not revive any statute or law which may have been repealed or abolished by the statutes or laws hereby repealed; nor does it affect any right already existing, or any proceeding already taken, except as provided in this code.

§ 741. This act shall take effect on the first day of August next.

Approved March 22, 1851.

CHAPTER 617.

AN ACT to revise the statutes.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the following chapters of the revised statutes of this commonwealth be adopted, and that they shall become the law of the land and take effect on the first day of July, 1852.

CHAPTER I.

HUSBAND AND WIFE.

ARTICLE I.

*Marriage.*Whom a man
may not marry.

§ 1. A man shall not marry his mother, grandmother, sister, daughter, or granddaughter; nor the wife of his father, grandfather, son, or grandson; nor the daughter, granddaughter, mother, or grandmother of his wife; nor the daughter or granddaughter of his brother or sister; nor the sister of his father or mother.

Whom a woman
may not marry.

A woman shall not marry her father, grandfather, brother, son, or grandson; nor the husband of her mother, grandmother, daughter or granddaughter; nor the son, grandson, father, or grandfather of her husband; nor the son or grandson of her brother or sister; nor the brother of her father or mother.

Where relationship is founded on marriage, the prohibition shall continue, notwithstanding the dissolution of the

marriage by death or divorce, unless the divorce is for a cause that rendered the marriage originally illegal or void.

This section includes illegitimate children and relatives.

Marriages prohibited by this section are incestuous and void.

§ 2. Marriage is prohibited and declared void—

1. With an idiot or lunatic ;
2. Between a white person and a negro, or mulatto, bond or free ;
3. Where there is a husband or wife living from whom the person marrying has not been lawfully divorced, with a privilege to re-marry ;
4. When not solemnized or contracted in the presence of an authorized person or society ;
5. When, at the time of marriage, the male is under the age of fourteen or the female is under twelve years.

In what cases marriage prohibited and declared void.

§ 3. The issue of an illegal or void marriage shall nevertheless be legitimate, except that the issue of an incestuous marriage, found such by the conviction, judgment, or decree of court, in the lifetime of the parties, or of a marriage between a white person and a negro or mulatto, shall not be legitimate ; and except, also, that where one of the parties is an idiot or lunatic, the issue shall be legitimate only as to the other party.

The issue of an illegal marriage.

§ 4. Where the marriage is contracted in good faith and with the full belief of the parties that a former husband or wife then living was dead, the issue of such marriage, born or begotten before notice of the mistake, shall be the legitimate issue of both its parents.

The issue of a marriage contracted with the belief that the other party was dead.

§ 5. The courts having chancery jurisdiction may nullify and declare void a marriage obtained by force or fraud ; or at the instance of any next friend, where the male was under the age of sixteen or the female under that of fourteen at the time of the marriage, and the marriage was without the consent of the father, mother, guardian, or other person having the proper charge of his or her person, and has not been ratified by cohabitation after that age.

Marriages obtained by force or fraud may be declared void.

§ 6. Where persons resident in this state shall attempt to evade the provisions of this chapter, declaring marriages void by going to and marrying in another state and afterwards return to and reside in this state, such marriage shall be deemed and treated as if solemnized in this state ; but this section shall not apply to such evasion of the rule herein as to the mode of solemnization.

§ 7. No marriage solemnized before any person professing to have authority therefor shall be invalidated for the want of authority to solemnize marriage, if it is consummated with the full belief of the parties or either of them that he had such authority, and that they have been lawfully joined in marriage.

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Who may solemnize marriages.

§ 8. Marriage shall be solemnized by the following persons only—

1. Ministers of the gospel or priests of any denomination in regular communion with any religious society.

2. Judges of the county court, and such justices of the peace as the county court may authorize.

3. Or, where either party belongs to a religious society having no officiating priest or minister, whose usage is to solemnize marriage at the usual place of worship and by consent given in the presence of the society, it may be so solemnized.

License to be first obtained.

§ 9. No minister or priest shall solemnize marriage, until he has obtained a license therefor from the county court of the county where he resides, upon satisfying the court that he is a man of good moral character and in regular communion with his religious society, and upon giving covenant, to the commonwealth, with good surety, not to violate the law of this state concerning marriage. The parties to such covenant may, for a breach thereof, be fined, on the presentment of a grand jury, not exceeding two thousand dollars. Such license may be revoked by any county court, after notice to the minister or priest.

How obtained

§ 10. No marriage shall be solemnized without a license therefor issued by the clerk of a county court. It shall only issue from the clerk of the county where the female usually resides, unless she is of full age or a widow and it is issued on her own application in person or by writing signed by her.

§ 11. If either of the parties is under twenty-one years of age and never theretofore married, no license shall issue without the consent of his or her father or guardian; or, if there is none or he is absent from the state, without the consent of his or her mother, personally given or certified in writing to the clerk over his or her signature, attested by two subscribing witnesses, and proved by the oath of one of them administered by the clerk. Nor, where the parties are not personally known to the clerk, shall a license issue until bond with good surety, in the penalty of one hundred dollars, is given to the commonwealth with condition that there is no lawful cause to obstruct the marriage.

License to be returned to the clerk of the county court.

§ 12. The person solemnizing the marriage, or the clerk of the religious society before whom it was done, shall, within three months, return the license to the clerk of the county court whence it issued, with a certificate of the marriage over his signature giving the date and place of celebration, the names of some two or three persons present, of whom there shall never be less than two. For failing to make such return he shall be fined sixty dollars.

Certificate to be filed.

§ 13. The certificate shall be filed away in the office and a fair register made of the parties names, of the person be-

fore whom, and the date when, the marriage was solemnized; and also a proper index to the book in which the register is kept.

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§ 14. If any person shall solemnize a marriage without such license, or without being authorized thereto by a county court, he shall be imprisoned not less than one nor more than twelve months and fined not more than one thousand dollars.

Penalty for solemnizing a marriage without license

§ 15. If any person not authorized shall solemnize a marriage under pretence of having authority, or falsely personate the father, mother, or guardian in obtaining a license, he shall be confined in the penitentiary not exceeding three years.

§ 16. If any authorized person shall knowingly, with or without license, solemnize a marriage such as is herein prohibited, he shall be imprisoned not less than one nor more than twelve months and fined not exceeding one thousand dollars.

§ 17. A clerk, who shall knowingly issue a license for any such prohibited marriage, shall be fined not less than five hundred nor more than one thousand dollars and expelled from his office by the judgment of the court before which his conviction is had. And if he issue a license contrary to his duty, as herein prescribed, he shall be fined not exceeding one thousand dollars. If the license is issued by a deputy he shall be fined the same as is directed when issued by the principal; and, in the case of prohibited marriages, shall be imprisoned not more than one year.

Penalty against a clerk for issuing a license contrary to law.

§ 18. In the absence of the clerk, or during a vacancy in the office, the license may be issued by a judge of the county court, who in so doing shall perform the duty and incur all the responsibilities of the clerk, and shall return a memorandum thereof to the clerk, and the same shall be recorded as if issued by him.

Judge of county court may issue license in the absence of the clerk.

§ 19. Any party to a marriage within the incestuous degree herein prohibited, or between a white person and a negro or mulatto, shall be fined not less than five hundred nor more than five thousand dollars; and if, after conviction, the parties continue to cohabit as man and wife, they or either of them shall be imprisoned not less than three nor more than twelve months.

§ 20. Where doubt is felt as to the validity of a marriage, either party may by bill in chancery demand its avoidance or affirmance; but where one of the parties was within the age of consent at the time of marriage, the other party being of proper age shall have no such proceeding for that cause against the party under age.

§ 21. If any female under sixteen years of age marries without the consent of her father or guardian, or of her mother, the court having chancery jurisdiction in the county of her usual residence, shall, on the petition of a next

Disposition of the estate of a female under 16, who marries.

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friend, commit her estate, real and personal, to a receiver, upon his giving adequate security for the performance of his duty, who shall hold her estate, and, after deducting a reasonable compensation for his services, pay out the rents and profits to her separate use, during her infancy, under the direction of the court. When the wife shall arrive at the age of twenty-one years, the estate, with its avails, shall be delivered to her, unless the court shall consider it for her benefit and interest to continue the same longer in the hands of the receiver.

ARTICLE II.

Martial Rights.

§ 1. Marriage shall give to the husband, during the life of the wife, no estate or interest in her real estate, chattels real, or slaves owned at the time or acquired by her after marriage, except the use thereof, with power to rent the real estate for not more than three years at a time, and hire the slaves in like manner for not more than one year, and receive the rent and hire.

1. Nor shall such real estate, slaves, rent, or hire, be liable for any debt or responsibility of his, contracted or incurred before or after marriage, but shall be liable for her debts and responsibilities contracted or incurred before marriage, and for such contracted after marriage on account of necessities for herself or any member of her family, her husband included, as shall be evidenced by writing signed by her and her husband. The remedy may be against both or against her alone, as the case shall require.

2. Nor shall the husband's contingent right of curtesy or life estate, or his right to such use, rent, or hire, be sold for, or otherwise subjected to, the payment of any separate debt or responsibility of his during her life.

§ 2. Husband and wife may sell and convey her chattel real or slave, in the same mode as the land of the wife may be sold and conveyed; and the proceeds shall be his, unless otherwise expressly provided in the conveyance or the obligation of the purchaser.

§ 3. The husband shall not be liable for any debt or responsibility of the wife contracted or incurred before marriage, except to the amount or value of whatever he may receive by her independent of real estate or slaves, their use, rent, or hire; but shall be liable as formerly for necessities furnished to her after marriage.

Sections 1, 2, and 3 of this article shall not apply to a marriage contracted prior to the twenty-third of February, one thousand eight hundred and forty-six.

§ 4. Where the husband abandons the wife and lives separately and apart from her, or abandons her and leaves the state, without making sufficient provision for her main-

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tenance, or where he is confined in the penitentiary for an unexpired term of more than one year, the wife may, by petition in chancery, be empowered to use, enjoy, and sell, for her own benefit, any property she may acquire thereafter or may have acquired since the abandonment or leaving the state; to make contracts, sue and be sued as a single woman; and also, to recover in her own name any property or debt to which she is entitled, or to which the husband is entitled in her right. She may also be empowered to sell and convey by her own deed any of her real estate or slaves, freed from any claim of her husband.

§ 5. Such husband, upon manifesting a proper disposition again to cohabit with his wife and make suitable provision for her, or upon his release from the penitentiary, by his petition may, in the discretion of the court, have all or part of said powers revoked, and take upon himself the prosecution or defense of any pending suit by or against her.

§ 6. The wife of an infant husband may unite with his guardian in the sale of his real estate so as to release her right of dower, where the guardian is authorized to sell and convey.

§ 7. When the real estate of a wife is taken for a railroad, turnpike, or other public use, or shall be damaged by such road, turnpike, or other public work, the compensation or damages shall be appropriated by the court in such manner as she, on privy examination, may direct, or, without such examination, for her benefit, in such manner as to the court shall seem just.

§ 8. A married woman who shall come to this from another state or country without her husband, he never having resided here, may contract, buy and sell, sue and be sued as an unmarried woman; but his arrival in the state and claiming his marital rights shall revoke all such power, leaving existing liabilities of herself and all property held here by her, and all suits unaffected by the revocation.

ARTICLE III.

Divorce and Alimony.

§ 1. The courts having chancery jurisdiction may decree a divorce for any of the following causes, to both husband and wife—

1. Such impotency or malformation as prevents sexual intercourse;

2. Living separately and apart without any cohabitation for the space of five consecutive years next before the application.

Also, to the party not in fault, for the following causes—

1. Abandonment, or like separation by one party from the other, for one year;

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2. Abandonment and living in adultery with another man or woman for six months ;

3. Condemnation for felony in or out of this state ;

4. Concealment from the other party of any loathsome disease existing at the time of marriage, or contracting such afterwards ;

5. Force, duress, or fraud in obtaining the marriage ;

6. Uniting with any religious society whose creed and rules require a renunciation of the marriage covenant or forbid husband and wife from cohabiting.

Also, to the wife when not in like fault, for the following causes—

1. Confirmed habit of drunkenness on the part of the husband of not less than one year's duration, accompanied with a wasting of his estate, and without any suitable provision for the maintenance of his wife and children ;

2. Habitually behaving towards her by the husband, for not less than six months, in such cruel and inhuman manner as to indicate a settled aversion to her, and to destroy permanently her peace and happiness ;

3. Such cruel beating or injury, or attempt at injury, of the wife by the husband as indicates an outrageous, ungovernable temper in him, and probable danger to her life, or great bodily injury from her remaining with him.

Also, to the husband for the following causes—

1. Where the wife is pregnant by another man without the husband's knowledge at the time of marriage ;

2. Adultery committed by the wife ; or such lewd, lascivious behavior on her part as proves her to be unchaste, without actual proof of a specific act of adultery.

§ 2. No decree of divorce shall authorize or permit the party obtaining it to marry again until one year after final decree, except where it is herein allowed in favor of both parties ; nor shall the party against whom the decree is rendered marry again in less than five years thereafter. An earlier marriage than is herein allowed shall subject the party entering into it to all the pains and penalties prescribed by law against bigamy.

§ 3. The defendant may answer a bill for divorce without oath ; and no such bill shall be taken for confessed or be sustained by the admissions of the defendant alone, but must be supported by other proof. Two witnesses, or one and strong corroborating circumstances, shall be necessary to sustain the charge of adultery or lewdness. The credibility or good character of such witnesses must be personally known to the judge, or to the officer taking the deposition who shall so certify, or it must be proved by some witness who is so known. It shall be the duty of the attorney

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for the commonwealth to resist every application for a divorce; and if successful in defeating it, he shall be allowed a fee of five dollars to be paid by the husband, which he may be compelled to pay by attachment.

§ 4. Suit for divorce must be brought in the county where the wife usually resides, if she has a residence in the state; if not, then in the county of the husband's residence; and no such suit shall be brought by one who has not been a continuous resident of this state for a year next before its institution. Nor, unless the party complaining had an actual residence here at the time of the doing of the act complained of, shall a divorce be granted for any thing done out of the state, unless it was also a cause for divorce by the law of the country where the act was done. A suit for divorce must be brought within five years of the doing of the act complained of; and cohabitation as man and wife, after a knowledge of the adultery or lewdness complained of, shall take away the right of divorce therefor.

§ 5. Every decree for a divorce may at any time be revoked or annulled by the court rendering it, on the joint application of the parties, and they thereby restored to the condition of husband and wife; but no divorce shall thereafter be granted between them for the same or a like cause.

§ 6. Decree for separation or divorce from bed and board may also be rendered for any of the causes which allow divorce, or for such other cause as the court in its discretion may deem sufficient. Pending an application for any divorce the court may allow the wife maintenance. Upon final decree of divorce from the bond of matrimony, the parties shall be restored such property, not disposed of at the commencement of suit, as either obtained from or through the other before or during the marriage, in consideration or by reason thereof; and if the wife have not sufficient estate of her own, she may, on a divorce obtained by her, have such allowance out of that of her husband as shall be deemed equitable.

§ 7. Pending an application for divorce, or on final decree, the court may make any order for the care, custody, and maintenance of the minor children of the parties, or any of them; and at any time afterwards, upon the petition of either parent, revise and alter the same, having, in all such cases of care and custody, the interest and welfare of the children principally in view; but no such order for maintenance of children or allotment in favor of the wife, shall divest either party of the fee simple title to real estate.

§ 8. A divorce from bed and board shall operate, as to property thereafter acquired, and upon the personal rights and legal capacities of the parties, as a divorce from the bond of matrimony; except that neither shall marry again during the life of the other, and except that it shall not bar

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curtesy, dower, or distributive right. Such decree may be revised or revoked at any time by the court rendering the same.

§ 9. Where the husband is about to remove himself or property out of the state, or where there is reason to suspect that he will fraudulently sell, convey, or conceal his property, the wife may obtain the necessary order for securing alimony to herself and maintenance to their children, without giving any security.

§ 10. A jury shall not be used in any case for divorce or alimony.

§ 11. Where a father, or widow having a child, joins the religious society called Shakers, or any religious society holding similar faith, without having made adequate provision for his or her child or children, the circuit court of the county where he or she resides, if in this state, or of the county in which the principal part of his or her property may be, if not residing in this state, may, upon petition of any next friend, appoint a guardian to any infant child of such father or mother, and make out of his or her estate a reasonable provision for the maintenance of such child or children, and remove the child from the custody of such parent or society.

§ 12. Sales and conveyances made by the husband to a purchaser with notice, and with intent to defraud or hinder the wife, or for the benefit of any religious society, in fraud or hinderance of the right of his children to maintenance, shall be void, as against such wife and children.

ARTICLE IV.

Curtesy and Dower.

§ 1. Where there is issue of the marriage born alive, the husband shall have an estate for his own life in all the real estate owned and possessed by the wife at the time of her death, or of which another may then be seized to her use; but shall hold the same subject to her debts.

§ 2. Whether there is such issue or not, the husband shall have an estate for his own life in all the slaves the wife owns at the time of her death and which remain after payment of her debts.

§ 3. After the death of the husband, the wife shall be endowed for her life, of one third of the real estate whereof he or any one, for his use, was seized of an estate in fee simple at any time during the coverture, unless her right to such dower shall have been barred, forfeited, or relinquished.

§ 4. If the wife voluntarily leaves her husband and lives in adultery, she shall forfeit such right of dower, unless he is afterwards reconciled to her and lives with her.

§ 5. The wife shall have dower of real estate, although there may have been no actual possession, or recovery of possession, by the husband in his lifetime.

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§ 6. The wife shall not be endowed of land sold but not conveyed by the husband before marriage; nor of land sold *bona fide* after marriage to satisfy a lien or incumbrance created before marriage, or created by deed in which she joined, or to satisfy a lien for the purchase money. But if there is a surplus of the land or proceeds of sale after satisfying the lien, she shall have dower or compensation out of such surplus, unless the surplus proceeds of sale were received or disposed of by the husband in his lifetime.

§ 7. A conveyance or devise of real or personal estate, by way of jointure, may bar the wife's dower; but, if made before marriage without her consent, or during her infancy or after marriage, she may, within twelve months after her husband's death, waive the jointure by written relinquishment acknowledged or proved before and left with the clerk of the county court, and have her dower. When she so demands and receives her dower, the estate conveyed or devised in lieu thereof shall determine, and revert to the heirs or representatives of the grantor or devisor.

§ 8. Where the wife is lawfully deprived of her jointure, or any part thereof, and not by any act of her own, she shall have indemnity therefor by way of dower or damages, out of her husband's estate.

§ 9. The wife shall be entitled to one third of the rents and profits of her husband's dowable real estate, from his death until dower is assigned; and she shall hold the mansion house and curtilage without charge therefor, until dower is assigned to her out of the estate devised or descended.

§ 10. Whether the recovery is against the heir, or devisee, or purchaser from the husband, the wife shall be endowed according to the value of the estate when received by the heir, devisee, or purchaser, so as not to include in the estimated value any permanent improvements he has made on the land.

Against the heir or devisee or his alienee, her claim for rent shall not exceed five years before suit; and against a purchaser from the husband, shall only be from commencement of suit. In either case it shall continue up to final recovery.

If, after suit brought, the widow or tenant dies before recovery, the damages may be recovered by her representative and against his heirs, devisees, and representative.

§ 11. The wife shall not be barred of dower by reason of any judgment or decree rendered by default or collusion against the husband, if she would be entitled to dower had there been no such judgment or decree. Nor shall an heir be bound by any collusive or *ex parte* assignment of dower made to her, except so far as she shows herself to have been justly entitled thereto.

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§ 12. Where the lands are not severally held by different devisees or purchasers, it shall not be necessary to assign dower out of each separate portion, but an equitable allotment may be made in one or more parcels, in lieu of the whole.

§ 13. If the husband held land by executory contract only, the wife shall not be endowed of the land, unless he owned such equitable right at his death.

§ 14. Where any real estate or slave is conveyed or devised to husband and wife, unless a right by survivorship is expressly provided for, there shall be no mutual right to the entirety by survivorship between them; but they shall take as tenants in common, and the respective moieties be subject to curtesy or dower with all other incidents to such a tenancy.

§ 15. A divorce bars all claim to curtesy or dower.

§ 16. If any stock in any of the banks or other corporations of this state is taken for or transferred to any female, and it is expressed on the face of the certificate or transfer-book of such stock that it is for the exclusive use of such female for her annual support, no husband she then has, or may thereafter have, shall take any interest in such stock or the dividends thereon; and the same, at her death, shall pass to her heirs; but, if unmarried, she may dispose of it by will, or, if married, so dispose of it with the consent of her husband, or without such consent, if so provided in the deed or will creating the trust.

She may also receive the dividends, and give acquittances therefor, though married; but she shall not in any way anticipate the same; nor shall any dividend be paid upon an order or power given by her before the same is declared.

§ 17. If real or personal estate be hereafter conveyed or devised for the separate use of a married woman, or for that of an unmarried woman, to the exclusion of any husband she may thereafter have, she shall not alienate such estate with or without the consent of any husband she may have; but may do so when it is a gift, by the consent of the donor or his personal representative.

Such estates, heretofore created, shall not be sold or encumbered but by order of a court of equity, and only for the purpose of exchange and reinvestment, for the same use as that of the original conveyance or devise; and the court shall see that the exchange or reinvestment is properly made.

CHAPTER II.
GUARDIAN AND WARD.

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ARTICLE I.

Appointment of Guardian and Curator.

§ 1. The several county courts shall have jurisdiction for the appointment and removal of guardians and curators to minors, and the settlement of their accounts.

The court of the county where the minor resides at the time of appointing the guardian or curator, shall have the jurisdiction, unless the minor is a non-resident of this state—in which case the jurisdiction shall be in the court of the county where the real estate of the minor, or the greater part thereof, may lie; or if he has no real estate, then in any county where he may have personal estate; and unless, also, the appointment is made by the will of the father of the minor—in which case the jurisdiction shall be in the court where the will was proved.

§ 2. Any father may, by will, appoint a guardian to his infant child during its minority, or for any less period, and may appoint the guardianship of the infant's estate to one, and the custody, nurture, and education of the infant to another.

§ 3. No guardian, except a testamentary one for nurture and education, can act, until he has been appointed by the proper county court and given covenant, with good surety approved by the court, to the commonwealth, faithfully to discharge the trust of guardian.

§ 4. If the court fails to take such covenant, or accepts such person or persons for surety as do not satisfy it of their sufficiency, the judges present and so in default, shall be jointly and severally liable to the ward for any damage he may sustain thereby.

§ 5. If the will of the father so directs, no security shall be required from the guardian, unless from change of circumstances in the guardian since the making of the will, or other cause, the court deems it imprudent to dispense therewith.

§ 6. In appointing a guardian, the court shall pay proper attention to the following order of precedence in right and not depart therefrom, unless it deems that prudence and the interest of the infant so require:

First, the father, or testamentary guardian of his appointing;

Secondly, the mother, if unmarried; and

Thirdly, the next of kin, giving preference to males.

§ 7. If the minor is fourteen years of age, he may, in the presence of the court or by writing signed in the presence of one of its judges, after privy examination, nominate his own guardian. But if the person so nominated is not approved by the court, or if the minor after summons fails to

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nominate a suitable person, or resides out of the state, or if the testamentary guardian fails for three months to qualify, the court may appoint a guardian of its own selection.

§ 8. During any vacancy in the office of guardian by reason of non-appointment, death, removal, or suspension of a guardian, the court may, from time to time, appoint and remove a curator, who shall give a covenant with surety similar to that required from a guardian.

§ 9. The powers, duties, and responsibilities of such curator shall be the same as those of a guardian.

§ 10. Any one damaged by the act or omission of a guardian or curator as such, may sue as relator upon his covenant; and with the assent of the county court, or of a court of chancery, any one may sue thereon as next friend of the ward before he has attained full age.

§ 11. When a guardian shall become insane, move out of the state, become incapable of discharging the duties of his trust, or evidently unsuited therefor, the court, after notice to him, may remove him; or when it appears proper, the court may permit him to resign his trust, if he first settles his accounts and delivers over the estate as by the court directed, and in either case, or upon his death, appoint another guardian.

§ 12. The marriage of a female ward shall operate as a discharge of the guardianship, and entitle her to demand a settlement with her guardian.

§ 13. The court may also remove a guardian for failing to make a settlement of his accounts as required by law, or as may be required by the court, or for failing to give additional security when required.

§ 14. The court shall annually inquire into the solvency of sureties for guardians; and if at any time it has cause to believe that the sureties of a guardian are insolvent or in failing circumstances, it shall, after summoning the guardian, require him to give additional security.

§ 15. Upon the application of the surety of any guardian and after summoning the guardian, the court may, if it believes him to be insolvent or in doubtful circumstances, require him to give counter security to his surety; and on his failing to do so, remove him or order the estate of the ward to be paid over to a new guardian or a curator.

ARTICLE II.

Power and duty of Guardian.

§ 1. A guardian shall, within sixty days after his appointment, return to the court, or to its clerk in vacation, a true and perfect inventory of the real and personal estate of the ward, signed by him and verified by his affidavit. If other estate shall afterwards come to his knowledge, he shall return a supplementary inventory thereof within sixty days from the time of obtaining such knowledge.

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§ 2. For failure to make such return within such times, the court may remove the guardian.

§ 3. The inventory shall describe the real estate and where situated, with its probable value, and the probable value of its rent; also, the name, age, and sex of each slave, with its probable value and hire; and also, a list of all other personal property, including debts due the ward, with the probable value.

§ 4. The inventory shall be recorded, and the clerk shall, in the months of January and July of every year, present the court with a list of such guardians as shall have failed to return an inventory or to settle their accounts; and the court thereupon shall summon any delinquent, coerce performance of his duty, or remove him, holding him personally responsible for the costs of the proceeding.

§ 5. A guardian shall discharge the liabilities of the ward for the debts of his ancestor out of his personal estate other than slaves; and when the personal estate with the rents of the real estate and hire of slaves are not sufficient therefor, he may, by leave of the county court, sell slaves for that purpose. He shall, also, receive and sue for the debts and demands owing to the ward, defend suits against him, and with leave of the court may compound a debt or demand.

§ 6. A guardian shall also have power to sell any of the personal estate of the ward other than slaves, and he may sell slaves with leave of the court when the interest of the ward may seem to require the sale to be made. He may lease any real estate of the ward, till the ward shall arrive at full age; but no such lease shall be made for a longer term than seven years. He may also renew any beneficial lease which the ward may hold as tenant for years, and keep the real estate in proper repair.

§ 7. A guardian shall have the custody of his ward, and the possession, care, and management of the ward's estate, real and personal, and out of the estate shall provide for the necessary and proper maintenance and education of the ward.

§ 8. The father of the minor, if living, or if dead, the mother, if suited to the trust, shall be allowed by the court to have the custody, nurture, and education of the ward.

§ 9. No disbursement shall be allowed the guardian for the maintenance and education of the ward beyond the income of the estate, except in the following cases, unless authorized by the deed or will under which the estate is derived:

First, when the ward is of such tender years or infirm health that he cannot be bound out as an apprentice, or no suitable person will take him as such; and

Secondly, when it is best for the ward that the principal of his personal estate shall be applied for his board and

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tuition, and the court upon settlement of the accounts shall deem such application to have been judicious, and properly made.

But neither the ward nor his real estate shall be liable for any such disbursement.

§ 10. If a balance, whether it be from profits received or estimated, or of interest or principal, is owing by a guardian at the end of any year, counting from the time of his appointment, which ought to have been invested or loaned out for the benefit of the ward in reasonable time, but which remains in the hands of the guardian, he shall be charged with interest from the end of the year in which such balance arose; and thereafter he shall be charged with interest upon interest in biennial rests.

§ 11. The guardian, besides all necessary disbursements and repairs, shall be allowed by the court a reasonable compensation for his services.

§ 12. A guardian shall, within sixty days after the expiration of a year from his appointment, settle his accounts as guardian with the county court, and at least once within every two years thereafter, and as much oftener as the court may require. At the expiration of his trust, he shall deliver and pay to those entitled thereto all the estate and money in his hands as guardian, or with which he is chargeable as such.

§ 13. The necessary vouchers shall accompany and remain with the guardian's accounts presented for settlement, which, when properly made, shall be *prima facie* evidence in his favor; but it may be surcharged and falsified by any person interested therein, who did not contest the settlement.

§ 14. The several courts of chancery shall also have power to hear and determine all matters between guardian and ward, require settlements of guardianship accounts, remove a guardian for neglect or breach of trust, control the custody and tuition of the ward and the management and preservation of his estate, and direct the sale of any of his real estate where necessary to the proper maintenance and education of the ward, or for the payment of his debts.

§ 15. The guardian and his surety shall be liable on their covenant for all property or money which comes to the hands of the guardian as such, whether by virtue of an order of court, or of any statute passed after the date of their covenant, or otherwise.

§ 16. Where there is no guardian in this state of a non-resident minor, his guardian appointed and qualified according to the law of the place where the minor resides, may collect, receive, and remove to such place of residence any personal estate of the minor being in this state. Upon application by petition in a summary way, the county court of the county having jurisdiction to appoint a guardian may authorize such foreign guardian to sue for, recover, and so

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remove any personal estate of such minor, or otherwise to act as a guardian appointed in this state.

§ 17. Where there is a guardian in this state of such non-resident minor, he may, by similar petition either to the county court or the circuit court of the county and ten days notice, be compelled to pay over to such foreign guardian for such removal the personal estate of the minor and the rents and profits of his real estate.

But neither court shall grant either of said petitions, unless it is satisfied by documentary evidence that such foreign guardian has, where he qualified, given bond with surety to account for all the estate of the minor that might come to his hands; nor, where there is no resident guardian, if there is any next of kin of such minor in this state within the knowledge or information of the court, until such next of kin shall have been summoned; nor unless the court is satisfied, that neither the minor nor any of his creditors in this state, will be prejudiced by the order.

CHAPTER III.

WILLS.

§ 1. Except where it would be contrary to the manifest intention, the word "will" as used in this chapter shall signify a last will or testament, codicil, appointment by will or writing in the nature of a will in exercise of a power, and also any other testamentary disposition.

Meaning of the word "will."

§ 2. Every person of sound mind, not being under twenty-one years of age, nor a married woman, may by will dispose of any estate, right, or interest in real or personal estate that he may be entitled to at his death, which would otherwise descend to his heirs or pass to his personal representative; and though he may become so entitled after the execution of his will.

Who may make a will.

§ 3. No person under twenty-one years of age can make any will, except in pursuance of a power specially given to that effect, and except, also, that a father may appoint by will a guardian to his child.

§ 4. A married woman may by will dispose of any estate secured to her separate use by deed or devise, or in the exercise of a special power to that effect.

§ 5. No will shall be valid unless it is in writing with the name of the testator subscribed thereto by himself, or by some other person in his presence and by his direction; and moreover, if not wholly written by the testator, the subscription shall be made or the will acknowledged by him in the presence of at least two credible witnesses, who shall subscribe the will with their names in the presence of the testator.

What wills shall be valid.

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§ 6. No appointment made by will in exercise of any power shall be valid, unless the same is so executed that it would be valid for the disposition of the property to which the power applies if it belonged to the testator; and every will so executed, except the will of a married woman, shall be a valid execution of a power of appointment by will, notwithstanding the instrument creating the power expressly requires that a will made in execution of such power shall be executed with some additional or other form of execution or solemnity.

A soldier or mariner may make a nuncupative will.

§ 7. A soldier in actual service, or a mariner at sea, may dispose of his personal estate by an unwritten will made within ten days of his death and in the presence of two competent witnesses present at the same time, and called upon by him to witness his intention, if the testamentary words or their substance be reduced to writing and subscribed by one of the witnesses within sixty days next after they were spoken.

The will of a person domiciled out of this state.

§ 8. The will of a person domiciled out of this state at the time of his death, shall be valid as to his personal property in this state, if it is executed according to the law of the place where he was domiciled.

Revocation of wills.

§ 9. Every will made by a man or woman shall be revoked by his or her marriage, except a will made in exercise of a power of appointment when the estate thereby appointed would not, in default of such appointment, pass to his or her heir, personal representative, or next of kin.

§ 10. No will or codicil, or any part thereof, shall be revoked, unless under the preceding section, or by a subsequent will or codicil, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is required to be executed, or by the testator, or some person in his presence and by his direction, cutting, tearing, burning, obliterating, cancelling, or destroying the same, or the signature thereto, with the intent to revoke.

Revival of wills.

§ 11. No will or codicil, or any part thereof, which shall be in any manner revoked, shall, after being revoked, be revived, otherwise than by re-execution thereof, or by a codicil executed in the manner hereinbefore required; and then, only to the extent to which an intention to revive the same is shown.

§ 12. No conveyance or other act subsequent to the execution of a will shall, unless it be an act by which the will is revoked as aforesaid, prevent its operation with respect to such interest in the estate comprised in the will as the testator may have power to dispose of by will at the time of his death.

Witnesses.

§ 13. If any person, who attests the execution of a will, shall, after its execution, become incompetent to be admitted a witness to prove the execution thereof, such will shall not on that account be invalid.

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And if a will is attested by a person to whom, or to whose wife or husband, any beneficial interest in any estate is thereby devised or bequeathed, if the will may not be otherwise proved, such person shall be deemed a competent witness; but such devise or bequest shall be void; except that, if such witness would be entitled to any share of the estate of the testator in case the will were not established, so much of his share shall be saved to him as shall not exceed the value of what is so devised or bequeathed.

§ 14. If a will charging any estate with debts is attested by a creditor, or the wife or husband of a creditor, whose debt is so charged, such creditor shall, notwithstanding, be admitted a witness for or against the will.

§ 15. No person shall, on account of his being an executor of a will, be incompetent as a witness for or against the will.

§ 16. A will shall be construed, with reference to the real and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

On what and
in whose favor
will operates.

§ 17. A provision for or advancement to any person shall be deemed a satisfaction in whole or in part of a devise or bequest to such person contained in a previous will, if it would be so deemed in case the devisee or legatee were the child of the testator; and whether he is a child or not, it shall be so deemed in all cases in which it shall appear from parol or other evidence to have been so intended.

§ 18. If a devisee or legatee dies before the testator, or is dead at the making of the will, leaving issue who survive the testator, such issue shall take the estate devised or bequeathed, as the devisee or legatee would have done if he had survived the testator, unless a different disposition thereof is made or required by the will.

§ 19. If the testator has a child or grandchild living at the time of his death, whom, then and at the time of making the will, the testator believed to be dead, or if a child dies out of the state within the knowledge of the testator, leaving issue of which the testator had no knowledge at such times, and no provision for or exclusion of such child, grandchild, or issue, is made by the will, the child, grandchild, or issue, shall take of the testator's estate as if he had died intestate, and as is hereinafter provided in favor of a pretermitted child. But the presumption that such pretermission was the result of mistake on the part of the testator, may be rebutted by parol or other proof.

§ 20. Unless a contrary intention shall appear by the will, such real or personal estate, or interest therein, as shall be comprised in any devise in such will which shall fail or be void, or otherwise incapable of taking effect, shall

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not be included in the residuary devise contained in such will, but shall pass as in case of intestacy.

§ 21. A devise of the land of the testator, or of the land of the testator in any place or in the occupation of any person mentioned in his will or otherwise described in a general manner, and any other general devise which would describe a leasehold estate, if the testator had no freehold estate which could be described by it, shall be construed to include his leasehold estates, or any of them to which such description shall extend, as well as freehold estates, unless a contrary intention shall appear by the will.

§ 22. A devise or bequest shall extend to any real or personal estate over which the testator has a discretionary power of appointment, and to which it would apply if the estate was his own property; and shall operate as an execution of such power, unless a contrary intention shall appear by the will.

§ 23. Where lands are devised to be sold on special or general trust, or are conveyed or devised to trustees or executors in trust to be sold generally or for any specific purpose, the purchaser shall not be bound to look to the application of the purchase money, unless so expressly required by the conveyance or devise.

Pretermitted
children.

§ 24. If any person dies leaving a child, or his wife *en-ciente* of a child which shall be born alive, and leaving a will, made when such person had no child living, wherein any child he might have is not provided for or mentioned, such will, except so far as it provides for the payment of the debts of the testator, shall be construed as if the devises and bequests therein had been limited to take effect in the event that the child shall die under the age of twenty-one years, unmarried and without issue.

§ 25. If a will is made when a testator has a child living, and a child is born afterwards, such after-born child or any descendant of his, if not provided for by any settlement, and neither provided for nor expressly excluded by the will, but only pretermitted, shall succeed to such portion of the testator's estate as he would have been entitled to if the testator had died intestate; towards raising which portion, the devisees and legatees shall, out of what is devised and bequeathed to them, contribute ratably either in kind or in money, as a court of equity in the particular case may deem most proper. But if any such after-born child or descendant dies under the age of twenty-one years, unmarried and without issue, his portion of the estate, or so much thereof as may remain unexpended in his support and education, shall revert to the person to whom it was given by the will.

On what wills
this chapter op-
erates.

§ 26. The preceding sections of this chapter shall not extend to any will made before this act is in force; but the validity and effect of such will shall be determined by the

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laws in force on the day before this chapter takes effect, in like manner as if those laws, so far as they relate to the subject, were herein enacted in place of such sections. Every will re-executed, republished, or revived by any codicil, shall, for the purposes of this chapter, be deemed to have been made at the time at which the same shall be so re-executed, republished, or revived.

Probate and
appointment of
curator.

§ 27. Wills shall be proved before, and admitted to record by, the county court of the county of the testator's residence; if he had no known place of residence in this state, and land is devised, then in the county where the land, or the greater part thereof, lies; if no land is devised, then in the county where he died or that wherein his estate, or the greater part thereof, shall lie, or where there may be any debt or demand owing to him.

§ 28. A writ of error, or an appeal, shall lie from the county court to the circuit court of the same county and thence to the court of appeals, upon every order admitting a will to record, or rejecting it. The circuit court and court of appeals shall try both law and fact, but the court of appeals shall not hear or adjudge any matter of fact pertaining thereto other than such as may be certified from the circuit court. The writ of error from the circuit court shall be sued out within five years after rendering the order of probate or rejection in the county court, and from the court of appeals within one year after the final decision in the circuit court.

§ 29. No will shall be received in evidence, until it has been allowed and admitted to record by a county court; and its probate before such court shall be conclusive, until the same is superseded, reversed, or annulled.

§ 30. Any such court, on being informed that a person has in his custody the will of a testator, may summon him and, by proper process, compel him to produce the same.

§ 31. When a will of a non-resident of this state relative to estate within this state has been proved without the same, an authenticated copy thereof and the certificate of probate thereof may be offered for probate in this state. When such copy is so offered, the court to which it is offered shall presume, in the absence of evidence to the contrary, that the will was duly executed and admitted to probate as a will of personalty in the state or country of the testator's domicile, and shall admit such copy to probate as a will of personalty in this state. And if it appears from such copy that the will was proved in the foreign court of probate to have been so executed as to be a valid will of lands in this state by the law thereof, such copy may be admitted to probate as a will of real estate.

§ 32. When any will or any such authenticated copy is offered for probate and a witness attesting the same resides out of this state, or though in the state is in confinement in

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another county or corporation under legal process, or is unable from sickness, age, or other infirmity to attend the court before which the same is offered, or resides at a distance of more than fifty miles, such court may cause a commission to be issued, annexed to the said will or copy, and directed to any person authorized by law to take depositions in other cases, to take his deposition. The deposition of such witness shall be taken and certified as depositions are taken in other cases; except that no notice need be given of the time and place of taking the same, unless it is in a case in which the probate is opposed by some person who has made himself a party. And the proof so given shall have the same effect as if it had been given in the court from which the commission issued.

§ 33. A person offering or intending to offer to a county court a will for probate may obtain from the clerk of such court process directed to the proper officer of any county, requiring him to summon any person interested in such probate to appear at the next term of such court and show cause why the said will should not be admitted to record.

§ 34. The court to which a will is offered for probate, may cause all persons interested in the probate to be summoned to appear on a certain day.

§ 35. Any person interested in such probate may be summoned, or proceeded against by order of appearance; and to any person so interested who is an infant or of unsound mind, a guardian *ad litem* may be assigned as in other cases.

§ 36. When the proceeding is taken to the circuit court, all necessary parties shall be brought before the court; and upon the demand of any one of them, a jury shall be impaneled to try which or how much of any testamentary paper produced is, or is not, the last will of the testator. If no jury be demanded, the court shall determine that question, and the final decision given shall be a bar to any other proceeding to call the probate or rejection of the will in question—subject to the right of appeal or writ of error to the court of appeals as hereinbefore named; but nothing in this section shall preclude a court of chancery from its jurisdiction to impeach such final decision, for such reason as would give it jurisdiction over any other judgment at law.

§ 37. A county court may, however, without summoning any party, proceed to probate and admit the will to record or reject the same.

§ 38. Any person interested, who, at the time of the final decision in the circuit court, resided out of this state, and was proceeded against by order of appearance only without actual appearance or being personally served with process, and any other person interested who was not a party to the proceeding by actual appearance or being personally served with process, may, within three years after such final

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decision in the circuit court, by bill in chancery, impeach the decision and have a re-trial of the question of probate; and either party shall be entitled to a jury for the trial thereof. An infant not a party, shall not be barred of such proceeding in chancery until twelve months after attaining full age.

§ 39. But no such proceeding in chancery by an infant or non-resident, for establishing or avoiding a will, shall operate further than is necessary to the rights of such infant or non-resident party, or otherwise affect the rights of any other person interested in the probate.

§ 40. The record of what is proved or deposed in court by witnesses on the motion to admit a will to record, and any depositions lawfully taken out of court on such motion, of witnesses who cannot be produced at a trial afterwards before a jury, may, on such trial, be admitted as evidence, to have such weight as the jury shall think it deserves.

§ 41. Every will or authenticated copy so admitted to record by any court shall be recorded by the clerk thereof and remain in his office, except during such time as the same may be carried to another court under a *subpœna duces tecum*.

§ 42. A will may be deposited by the person making it, or any one for him, with the clerk of the county court of the county of his residence, for safe keeping, upon payment of a fee of one dollar to the clerk, who shall receive, keep, and deliver the same according to the directions on a sealed envelope.

If there are no such directions, or the party entitled does not apply, the will shall be handed to and opened by the next or some succeeding county court, after the death of the testator, and there retained for probate.

CHAPTER 4.

OFFICE AND OFFICER.

§ 1. No office or post of profit, trust, or honor under this commonwealth, whether civil or military, legislative, executive, ministerial or judicial, nor the deputation thereof, in whole or in part, shall be sold or let to farm by any person holding or expecting to hold the same.

Such person so selling or letting, and the person so buying or receiving the letting, or with whose knowledge the same has been bought for him by another, shall be disqualified from holding such office or post, or the deputation thereof; and upon conviction, shall be expelled therefrom.

§ 2. Every contract or security made or obtained in violation of the preceding section shall be void, except that a bond of indemnity from a deputy and his sureties to a sher-

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iff, sergeant of the court of appeals, clerk, or marshal shall not be void.

§ 3. If any officer or deputy holding any such office or post as is mentioned in the first section of this chapter, shall be convicted of bribery, forgery, perjury, or any felony by a court of record in or out of this state, his office or post shall be vacated by such conviction; and though a pardon should be afterwards granted to him, it shall not avoid the forfeiture.

§ 4. All judgments rendered or acts done by such person by authority or color of his office, before his removal or such conviction, shall be good and valid, notwithstanding any thing by him done to incur a forfeiture.

§ 5. When a person in office shall accept another office or employment incompatible with the former office, such former office shall be vacated by the acceptance of the latter.

Incompatible
offices.

§ 6. A person holding an office, post, or employment under this state or the United States which is incompatible with a seat in the legislature, shall not be voted for as senator or representative until he has resigned his office, post, or employment, nor until a duplicate of his resignation has been filed in the clerk's office of the court of the county in which he resides; and all votes given for him before such resignation is so filed, shall be void.

§ 7. The offices of justice of the peace or judge of the county court shall be deemed incompatible with that of surveyor, sheriff, deputy sheriff, coroner, constable, jailer, or assessor; as shall also the last seven with each other. The offices of justice of the peace, judge of the county court, sheriff, jailer, or coroner shall also be deemed incompatible with that of clerk or deputy clerk of a court.

Official bonds
and oaths.

§ 8. Where any bond is or may be required by law, with or without penalty, from any person holding office, post, or employment under this state, or about to hold the same, or from a person who is or is about to become guardian, executor, administrator, curator, committee of an idiot or lunatic, or to assume any other like trust or employment, there shall be taken from such person and his sureties, in lieu of a bond, except where otherwise required by the revised statutes, a covenant to the commonwealth of Kentucky, in substance that the principal shall faithfully discharge the duties of the office, trust, or employment. But a bond or covenant taken in any other form shall, nevertheless, be binding on the parties thereto, according to its terms.

§ 9. Suits may be brought from time to time on any such covenant or bond hereafter given, in the name of the commonwealth, for her benefit or for that of any county, city, town, society, or person injured by a breach of the covenant or condition, at the proper costs of the party suing,

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against the parties jointly or severally, and together with the personal representative, heirs and devisees or distributees of such of them as may be dead; and the recovery against principal and surety shall not be limited by the amount of the penalty named in such bond.

Nor shall the recovery be restricted only to such duties or responsibilities as belonged to the office, post, trust, or employment at the date of the covenant or bond, but may include any such duties or responsibilities thereafter imposed by law or lawfully assumed.

§ 10. No officer from whom a bond is required shall enter upon the duties of his office, until the required bond is given. A breach of this provision, or a failure to take the oath of office prescribed by law, shall be a misdemeanor; and on conviction thereof, such officer shall be removed from office by the judgment of the court where such conviction is had.

§ 11. The official oath of any officer may be administered by any judge or justice of the peace.

§ 12. If the official bond is not given and the oath of office taken within a month of the time when the officer was elected or received notice of his appointment, or of the time when his appointment ought to take effect, the office shall be considered vacant, and he shall not be re-eligible thereto for two years.

§ 13. Every person, before entering on the performance of the duties of any office for the state, or any district, county, city, or town, shall take the oath of office prescribed by the constitution, and the revised statutes, in lieu of all other oaths heretofore required by law; and every person, before entering on the duty of executor, administrator, guardian, curator, or committee of an idiot or lunatic, or any other like trust or employment, in lieu of all other oaths heretofore prescribed, and not required in the revised statutes, shall take in substance the following oath or affirmation: "I do solemnly swear (or affirm) that I will faithfully perform the duties of _____ according to law."

CHAPTER V.**CONSTRUCTION OF STATUTES.**

In the construction of statutes the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the legislature:

§ 1. The word "state," when applied to a part of the United States, shall be construed to include the several territories thereof and the District of Columbia. And the words "United States" shall be also construed to include the district and territories aforesaid.

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§ 2. The word "justice," or "justices," shall be construed as if the words "of the peace" followed.

§ 3. Words purporting to give authority to three or more public officers or other persons, shall be construed as giving such authority to a majority of such officers or other persons.

§ 4. The words "personal representatives" shall be construed to include the executor or the administrator, or a sheriff or other officer who is required by law and is ordered by court to act when no person will qualify as executor or administrator.

§ 5. The words "unsound mind" shall be construed to include every one who is an idiot, lunatic, *non compos*, or deranged.

§ 6. The word "oath" shall be construed to include an affirmation, in all cases in which an affirmation may be substituted for an oath, and in the like cases, the word "sworn" shall be construed to include the word "affirm."

§ 7. The word "month" shall be construed to mean a calendar month, and the word "year" a calendar year, and the word "year" alone shall be equivalent to the expression "year of our Lord."

§ 8. When a statute requires a notice to be given, or any other act to be done a certain time before any motion or proceeding, there must be that time exclusive of the day for such motion or proceeding. But the day on which such notice is given or such act is done, may be counted as one day and part of the time.

§ 9. Where any proceeding is directed by law to take place, or any act is directed to be done, on a particular day of a month, if that day happen to be Sunday, the proceeding shall take place, or the act shall be done, on the next day.

§ 10. Where the law authorizes a court, or the proceedings of any tribunal or officer, to be adjourned from day to day, an adjournment from Saturday until Monday shall be legal.

§ 11. "Cattle" includes horse, mule, ass, sheep, hog, or goat, of any age or sex, bull, cow, calf, and ox; cow includes heifer.

§ 12. A word importing the singular number only, may extend and be applied to several persons or things as well as to one person or thing, and a word importing the plural number only, may extend and be applied to one person or thing as well as to several persons or things.

A word importing the masculine gender only, may extend and be applied to females as well as males; and the word "person" may extend and be applied to bodies politic and corporate, societies, communities, and the public generally, as well as individuals.

§ 13. The words "real estate" or "land," in the statute

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law, shall be construed to mean lands, tenements, and hereditaments, and all rights thereto and interests therein, other than a chattel interest; and the words "personal estate" shall include chattels real and other estate as, upon the death of the owner intestate, would devolve upon his personal representative.

§ 14. No part of this revision is retrospective, unless expressly so declared.

§ 15. There shall be no distinction in the construction of statutes, between criminal or civil and penal enactments. All statutes shall be construed with a view to carry out the intention of the legislature.

§ 16. The rule of the common law, that statutes in derogation thereof are to be strictly construed, is not to apply to this revision; on the contrary, its provisions are to be liberally construed, with a view to promote its objects.

§ 17. All words and phrases shall be construed and understood according to the common and approved usage of language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such meaning.

§ 18. The word "grantor" may be construed as including every person from or by whom any freehold, estate, or interest passes in or by any deed, and the word "grantee" as including every person to whom any such estate or interest passes in like manner.

§ 19. The words "preceding" and "following," when used by way of reference to any section of this code, shall be construed to mean the section next preceding or next following that in which such reference is made, unless when some other is expressly designated.

§ 20. The word "will" shall be construed to mean codicils as well as wills, and the words "last will" as meaning last will and testament.

§ 21. The word "issue," as applied to the descent of real estate, shall be construed to include all the lawful lineal descendants of the ancestor.

§ 22. When a law which may have repealed another shall be repealed, the previous law shall not be revived, unless the law repealing it be passed during the same session.

§ 23. No new law shall be construed to repeal a former law, as to any offense committed against the former law, nor as to any act done, any penalty, forfeiture or punishment incurred, or any right accrued or claim arising under the former law, or in any way whatever to affect any such offense or act so committed or done, or any penalty, forfeiture or punishment so incurred, or any right accrued or claim arising before the new law takes effect, save only that the proceedings thereafter had shall conform, so far as

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practicable, to the laws in force at the time of such proceedings. If any penalty, forfeiture or punishment be mitigated by any provision of the new law, such provision may, by the consent of the party affected, be applied to any judgment pronounced after the new law takes effect.

§ 24. A person injured by the violation of any statute may recover from the offender such damage as he may sustain by reason of the violation, although a penalty or forfeiture for such violation be thereby imposed.

§ 25. The words "legatee" and "devisee" shall each be held to convey the same idea, and the words "bequeath" and "devise" to mean the same thing; and the words "bequest" and "legacy" shall each be held to mean the same thing, and to embrace and include either real or personal estate, or both.

§ 26. When the law requires any writing to be signed by a party thereto, it shall not be deemed to be signed unless the signature be subscribed at the end or close of such writing.

CHAPTER VI.

CONVEYANCES.

No seal or indentation required to the deed of a private person.

§ 1. No seal, or scroll, or indentation, shall be necessary to give validity or effect to a deed, except the deed of a state or a corporation, which shall have a seal as heretofore.

Effect of deeds.

§ 2. The owner may convey any interest in lands, not in the adverse possession of another.

A writing or possession necessary to pass the title.

§ 3. No estate of inheritance, or freehold, or for a term of more than one year, in lands, shall be conveyed unless by deed or will; and no gift of a slave shall be valid unless by deed or will, or unless actual possession shall have come to and remained with the donee, or some person claiming under him.

If the donor and donee reside together at the time of the gift, possession of the donee at the place of their residence shall not be a sufficient possession within the meaning of this section.

Operation of deeds in transferring possession.

§ 4. Conveyances by deed of bargain and sale, or deed of release, or by covenant to stand seized to use, or deed operating by way of covenant to stand seized to use, or by grant, shall be held to transfer the possession of the bargainor, releasor, covenantor or grantor, to the bargainee, releasee, grantee, or person entitled to the use, for the estate or interest which he has or shall have in the use and intends to convey.

Effect of a release.

§ 5. Every deed of release shall be as effectual for the purposes therein expressed, without the execution of a lease, as if the same had been executed.

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Effect of certain covenants in a deed.

§ 6. A covenant by a grantor in a deed, "*that he will warrant the property hereby conveyed,*" or words of like import, shall have the same effect as if the grantor had covenanted that he, his heirs and personal representatives, would forever warrant and defend the said property, unto the grantee, his heirs, personal representatives and assignees, against the claims and demands of all persons whatever.

§ 7. A covenant by a grantor, "*that he will warrant specially the property thereby conveyed,*" or words of like import, shall have the same effect as if the grantor had covenanted that he, his heirs and personal representatives, would forever warrant and defend the said property, unto the grantee, his heirs, personal representatives and assignees, against the claims and demands of the grantor and all persons claiming, or to claim by, through, or under him.

§ 8. The words "*with warranty,*" or "*with general warranty,*" in any deed, shall be deemed to be a covenant by the grantor, "*that he will warrant the property thereby conveyed.*"

The words "*with special warranty,*" in any deed, shall be deemed to be a covenant by the grantor, "*that he will warrant specially the property thereby conveyed.*"

§ 9. No deed conveying any title to, or interest in, land for a longer time than five years, nor any agreement in consideration of marriage, shall be good against a purchaser for a valuable consideration, not having had notice thereof, or any creditor, unless the same be acknowledged by the party who shall execute the same, or be proved and lodged for record in the proper office, as prescribed by law.

Deeds not valid as against creditors, &c., unless recorded.

§ 10. All laws authorizing any deed or mortgage to be recorded in the clerk's office of the court of appeals or general court, are hereby repealed.

All deeds and mortgages and other instruments of writing, which are required by law to be recorded, to be effectual against purchasers without notice, or any creditor, shall be recorded in the clerk's office of the court of the county in which the property conveyed, or the greater part thereof, shall be.

Where deeds to be recorded.

§ 11. No deed of trust or mortgage, conveying a legal or equitable title to real or personal estate, shall be valid against a purchaser for a valuable consideration, without notice thereof, or against any creditor, until such deed shall be acknowledged or proved according to law, and lodged for record.

Deeds of trust and mortgages.

§ 12. All *bona fide* deeds of trust or mortgage shall take effect in the order that the same shall be legally acknowledged or proved and lodged for record.

§ 13. Liens, by deed or mortgage, may be discharged by an entry acknowledging satisfaction of the same on the margin of the record thereof, signed by the person entitled to the same, or his personal representative, and attested by the clerk or his deputy, which, in the case of a mortgage or,

How liens may be discharged.

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deed of trust, shall have the effect to reinvest the title in the mortgagor or grantor, or person entitled thereto.

This provision shall not be held to change the existing law, if no such entry be made.

Powers of attorney.

§ 14. Powers of attorney, to convey real or personal property, may be acknowledged or proved in the manner, and lodged for record in the proper office, as prescribed for recording conveyances. If the conveyance, made under a power, is required by law to be recorded, or lodged for record, to make the same valid against creditors and purchasers, then the power must be lodged or recorded in like manner.

Within what time deeds to be recorded.

§ 15. Deeds made by residents of Kentucky, other than deeds of trust and mortgages, shall not be good against a purchaser for a valuable consideration not having notice thereof, or any creditor, except from the time the same shall be legally acknowledged or proved and lodged for record, unless the same be so lodged within eight months from the date thereof.

If made by persons residing out of Kentucky, and in the United States, within twelve months.

If out of the United States, within eighteen months.

Deeds executed in this state.

§ 16. Deeds executed in this state, by persons other than *femes covert*, may be admitted to record—

1. On the acknowledgment, before the proper clerk, by the party making the deed ;

2. Or by the proof of two subscribing witnesses, or by the proof of one subscribing witness, who shall also prove the attestation of the other ;

3 Or by proof by two witnesses that the subscribing witnesses are both dead, and also like proof of the signature of one of them and of the grantor ;

4. Or by like proof that both of the subscribing witnesses are out of the state, or that one is so absent, and the other is dead, and also like proof of the signature of one of the witnesses and of the grantor ;

5. Or on the certificate of a clerk of a county court of this state that the same had been acknowledged or proved before him as required by this section.

Deeds executed out of the state and within the United States.

§ 17. Deeds executed out of the state, and within the United States, by persons other than *femes covert*, may be admitted to record when the same shall be certified, under his seal of office, by the clerk of a court, mayor of a city, or secretary of state, or commissioner to take the acknowledgment of deeds, or by a judge under the seal of his court, to have been acknowledged or proved before him in the manner hereby required.

Deeds executed out of the U. S.

§ 18. Deeds executed out of the United States, by persons other than *femes covert*, may be admitted to record when the same shall be certified by any foreign minister or consul, or secretary of legation of the United States, or by

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How certain
needs to be cer-
tified.

Deeds of married women.

[Seal.] Given under my hand and seal of office.
A. B.

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3. If the husband join in the deed with his wife, and acknowledge it before the same officer, his acknowledgment may be certified with that of his wife, immediately succeeding the word "parties," thus, "which was acknowledged by the said C. D. to be his act and deed."

Deeds not re-
corded in proper
time.

§ 23. Where deeds have been or may be legally executed, but not recorded or lodged for record in proper time, such deeds may be proved or acknowledged and recorded, and be as effectual from the time of so recording, as if recorded in proper time. This section shall not apply to the deed of a married woman, unless re-acknowledged by her, and recorded thereafter in proper time.

Duty of clerks.

§ 24. The clerk of each county court shall record all instruments of writing embraced in any section of this chapter, which shall be lodged for record properly certified, or which shall be acknowledged or proved before him as required by law. He shall also record the certificates indorsed on the same, and shall certify the time when the instrument was lodged in his office for record. If acknowledged or proved before him, he shall also certify the time of doing the same, and by whom proved, and that the instrument and the certificates thereon have been duly recorded in his office.

Duty of the
successors of
clerks.

§ 25. Where the office of any county court clerk has been or may hereafter be vacated, leaving therein any instruments of writing unrecorded, which, from an official indorsement thereon, shall appear to have been acknowledged or proved ready for record, or that have been acknowledged or proved before another officer, and certified according to law, and lodged in his office for record, the successor of such clerk shall record the same, making his certificate conform to the facts.

§ 26. Where the office of any county court clerk has been or may hereafter be vacated, leaving therein any instrument of writing unrecorded, which, from an official indorsement thereon, shall appear to have been acknowledged or proved in part, the successor may receive the complete acknowledgment or proof according to law, and record the same, making his certificate conform to the facts.

§ 27. Where the office of any county court clerk has been or may hereafter be vacated, leaving therein any instrument of writing recorded in his office, the original of which has never been taken therefrom, and in the record of which, or the authentication thereof, there is an error or omission, by deviation from the original, it shall be the duty of the successor to correct such record, by making it an exact copy of the original instrument and authentication.

And whenever the clerk who has vacated his office, shall have failed to put his name to the certificate on any instrument of writing which he has recorded, or to the record

thereof, and the original shall not have been removed from his office, the successor shall sign the name of the deceased clerk to the same, and shall make a note on the record, at the foot of the certificate, of any act done as aforesaid.

§ 28. No commission shall be necessary to take the acknowledgment or proof of any instrument of writing, preparatory to the recording of the same.

§ 29. Certified copies of all instruments legally recorded shall be *prima facie* evidence, in all courts and tribunals of this state.

§ 30. Instruments which have been or may be recorded, shall be delivered to the party entitled to the same.

§ 31. Where any married woman shall heretofore, jointly with her husband, have executed a deed for any property, with a view to pass her estate therein, and shall have acknowledged the same, separately and apart from her husband, before any officer having the power to take and certify the acknowledgment or proof of deeds, and the same has been recorded in the proper office in due time, as required by law, the deed so recorded, or a copy from the record thereof, shall be *prima facie* evidence, in all courts and tribunals, that the deed was freely and voluntarily executed and acknowledged.

But this provision shall not be held to embrace a certificate which on its face shows that only a relinquishment of dower was intended.

§ 32. No deed shall be held to be legally lodged for record until the tax be paid thereon.

§ 33. It shall be the duty of each county court clerk, once in each year, at the April or May term, to advertise, in writing, at the court house of his county, a list of all deeds in his office unrecorded, and the reason why each one has not been recorded.

§ 34. The clerk of each county court shall make and keep an alphabetical cross index of all conveyances heretofore or hereafter recorded in his office; and he shall, when a mortgage or deed of trust is lodged in his office for record, forthwith place the names of the parties to such mortgage or deed of trust upon the cross index of his office.

§ 35. Nothing contained in this chapter shall be held to enlarge the powers of infants or persons of unsound mind.

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No commission necessary to take the acknowledgment of a deed.
Certified copies.

Instruments recorded.

Effect of a privy acknowledgment of a married woman

Effect of not paying tax on a deed.

Certain deeds to be advertised

Index to deed book.

CHAPTER VII.

REAL ESTATE.

§ 1. The commonwealth of Kentucky is deemed to have possessed the original and has the ultimate property in and to all lands within the state.

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Land titles al-
lodial.Acts of the
husband not to
prejudice rights
of the wife.Effect of a dis-
seizin and death
of a disseizor.Effect of a
deed or will.Estates tail
turned into es-
tates in fee sim-
ple.How certain
limitations in a
deed or will to
be construed.Deed to a man
for life and then
to his heirs, &c.A contingent
remainder.

§ 2. All land titles in this state are declared to be al-
lodial, and (subject to escheat) the entire and absolute prop-
erty in the same is vested in the owners, according to the
nature of their respective estates; except

§ 3. That the right of eminent domain in and to all real
estate resides and remains in the commonwealth.

§ 4. No judgment of eviction suffered by a husband, or
feoffment or conveyance made by him of the inheritance or
freehold of his wife, or other act done by him, shall operate
as a discontinuance, or shall prejudice or impair her right
of action, or the right of entry of her or her heirs, or such
as have right after her death.

§ 5. The dying seized of a disseizor shall not be such de-
scent in law as to take away the right of entry of any who
have such right at the death of the disseizor, unless he shall
have had twenty years peaceable possession after the dis-
seizin was committed.

§ 6. Any interest in or claim to real estate may be dispo-
sed of by deed or will in writing.

Any estate may be made to commence *in futuro*, by deed
in like manner as by will, and any estate which would be
good as an executory devise or bequest, shall be good if
created by deed.

§ 7. Every estate in land created by deed or will, with-
out words of inheritance, shall be deemed a fee simple, or
such estate as the grantor or testator had power to dispose
of, if a less estate be not limited by express words, or by
necessary inference.

§ 8. All estates heretofore or hereafter created, which in
former times would have been deemed estates in tail, shall
henceforth be held to be estates in fee simple; and every
limitation on such an estate shall be held valid, if the same
would be valid when limited upon an estate in fee simple.

§ 9. Every limitation in any deed or will, contingent upon
the dying of any person, without heirs, or heirs of the body,
or issue, or issue of the body, or children, or offspring, or
descendant, or other relative, shall be construed a limita-
tion to take effect when such person shall die, not having
such heir, or issue, or child, or offspring, or descendant, or
other relative living at the time of his death, or born with-
in ten months thereafter, unless a different limitation be
plainly declared on the face of the instrument creating it.

§ 10. When any estate shall be given by deed or will to
any person for his life, and after his death to his heirs, or
the heirs of his body, or his issue or descendants, the same
shall be construed to be an estate for life only in such per-
son, and a remainder in fee simple in his heirs, or the heirs
of his body, or his issue or descendants.

§ 11. A contingent remainder shall in no case fail for the
want of a particular estate to support it.

§ 12. The alienation of a particular estate on which a remainder depends, or the union of such estate with the inheritance by purchase or descent, shall not operate by merger, or otherwise to defeat, impair, or affect such remainder.

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Certain acts not to affect remainders.

§ 13. Joint tenants may be compelled to make partition, and when a joint tenant shall die, his or her part of the joint estate, real or personal, shall descend to his or her heirs, or pass by devise, or go to his personal representatives, subject to debts, curtesy, dower, or distribution.

The right of survivorship between joint tenants.

§ 14. The preceding section shall not apply to any estate which joint tenants have as executors or trustees, nor to an estate conveyed or devised to persons in their own right, when it manifestly appears, from the tenor of the instrument, that it was intended that the part of the one dying should belong to the others; neither shall it effect the mode of proceeding on any joint contract, judgment, or decree.

§ 15. When any estate shall, by deed or will, be limited in remainder to the son or daughter, or to the use of the son or daughter, of any person to be begotten, such son or daughter, born after the death of his or her parent, shall take the estate in the same manner as if he or she had been born in the lifetime of the parent, notwithstanding no estate shall have been conveyed to support the remainder after the death of the parent.

Contingent remainders valid in certain cases.

§ 16. The attornment of a tenant to a stranger shall be void, unless it be with the consent of the landlord, or pursuant to or in consequence of the judgment, order, or decree of a court. A conveyance or devise of a rent, reversion, or remainder, shall be valid without an attornment of the tenant; but no tenant who shall pay the rent to the grantor before notice of the conveyance, shall suffer any damage thereby.

Effect of attornments, &c.

§ 17. A deed and warranty of land, purporting to pass or assure a greater right or estate than the person can lawfully pass or assure, shall operate to convey or warrant so much of the right and estate as such person can lawfully convey, but shall not pass or bar the residue of the right or estate purporting to be conveyed or assured.

Effect of warranties, &c.

§ 18. If the deed of such grantor warrant the estate purporting to be conveyed against him and his heirs, and any estate, real or personal, shall descend to the claimant, or come to him by devise or distribution on the side of the grantor, then he shall be barred for the value of the estate that shall so descend, or come to him by descent, devise, or distribution.

§ 19. If in time after any real or personal estate shall come to the claimant by descent, devise, or distribution from the grantor, then shall the tenant recover from him of the estate warranted, the value of the estate that so comes to him by descent, devise, or distribution. The recovery

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shall be by writ from the court in which the plea was pleaded.

§ 20. When a deed shall be made to one person, and the consideration therefor shall be paid by another, no use or trust shall result in favor of the latter.

§ 21. Such deeds shall be deemed fraudulent, as against the existing debts and liabilities of the person paying the consideration.

Resulting trusts

§ 22. The provisions of the section before the one next preceding this, shall not extend to cases where the grantee shall have taken a deed in his own name without the consent of the person paying the consideration, or where the grantee, in violation of some trust, shall have purchased the lands deeded with the effects of another person.

Trust estates
liable for debts.

§ 23. Estates of every kind held or possessed in trust shall be subject to the debts and charges of the persons to whose use or for whose benefit they shall be respectively held or possessed, as they would be subject to, if those persons owned the like interest in the property held or possessed as they own or shall own in the use or trust thereof.

Certain sales
of trustees in-
valid.

§ 24. No sale made of any property, by a trustee by virtue of a deed of trust or pledge to secure the payment of debts, shall be valid, nor shall the conveyance by such trustee pass the title of the property specified in such deed or pledge, unless the sale thereof shall be in pursuance to a decree or order of a court, or the maker of such deed or pledge shall join in a writing evidencing the sale.

Constructive
effect of deeds.

§ 25. Every deed shall, unless an exception be made therein, be construed to include all buildings, privileges and appurtenances of every kind attached to the lands therein conveyed.

How liens for
purchase money
may be reserved.

§ 26. When any real estate shall be hereafter conveyed, and the purchase money, or any part thereof, shall remain unpaid at the time of the conveyance, the grantor shall not thereby have a lien for the same, unless it be expressly stated in the deed what part of the consideration remains unpaid.

§ 27. Recoveries by fraud, craft, or covin, upon feigned and untrue titles, against landlords, caused and suffered by them to put the termers out of possession, may be falsified by said termers for their terms only, in such wise and form as tenants of the freehold shall and may do by the course of the common law, when such tenant of the freehold was neither privy nor party to the recovery.

§ 28. The said termers and their representatives and assigns shall retain, hold, and enjoy their terms according to their leases, notwithstanding such recoveries, against the persons recovering, as they should or might have done against the lessors, if such recovery had not been had or suffered.

§ 29. The landlords and their representatives and assignees shall have like remedy, after such recovery, against the termers and their representatives and assignees, for the rents reserved, and like action for waste, as if the recovery had not been had.

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Feigned recoveries.

§ 30. No execution shall be effected by any such feigned recovery; but all persons having or entitled to have any lands in execution, shall have like remedy to avoid and falsify such recoveries as is provided for termers.

§ 31. Grantees or assignees of reversions, and their heirs, personal representatives, and successors, shall and may have and enjoy like advantages against lessors, their personal representatives and assignees, by entry, or for doing waste, or other forfeiture, and shall have the same advantages, benefits, and remedies by action for the non-performance of any covenant or agreement contained and expressed in any lease, grant, or obligation, against the lessees, grantees, or their personal representatives or assignees, as the said lessors or grantors, or their heirs or successors, ought, should or might have had.

§ 32. Grantees and lessees of lands for term of years, or for life or lives, their personal representatives and assignees, shall and may have like action, advantage and remedy against all and every person, their heirs, personal representatives, successors, and assignees, who shall have any gift or grant of the reversion of the same lands so let, or any part thereof, or any covenant or agreement contained in the grant or lease, as the same grantees or lessees might or should have had against the said grantors or lessors, their heirs and successors.

§ 33. No covenant or promise of a lessee, that he will repair or leave the premises in repair, shall have the effect, if the buildings are destroyed by fire or otherwise, without fault or negligence on his part, of binding him to erect such buildings again, unless the contrary be expressly provided.

Construction of a covenant to repair.

§ 34. The absolute power of alienation shall not be suspended, by any limitation or condition whatever, for a longer period than during the continuance of a life or lives, in being at the creation of the estate, and twenty one years and ten months thereafter.

CHAPTER VIII.

EXECUTORS AND ADMINISTRATORS.

ARTICLE I.

§ 1. The person nominated by a will as the executor thereof, shall not have power to act until he qualifies as such, by taking an oath and giving bond in the court in

Powers of executors.

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which the will, or an authenticated copy thereof, is admitted to record. But he may provide for the burial of the testator, pay reasonable funeral expenses, and take care of and preserve the estate.

Oath.

§ 2. The oath of an executor, or administrator with the will annexed, shall be, that the writing admitted to record contains the true last will and testament of the deceased, so far as he knows or believes, and that he will faithfully perform the duties of his office to the best of his judgment.

To give bond.

§ 3. Every executor, and administrator with the will annexed, shall give a bond and good surety, sufficient to secure the amount of the whole estate of the deceased to be administered.

No surety in certain cases.

§ 4. But when the will directs that an executor shall not give surety, the court shall not require it, unless on the motion of some one interested, or from its own knowledge it shall appear proper to require it.

Form of bond.

§ 5. The bond of an executor, or administrator with the will annexed, shall be in substance as follows:

Whereas, I, A. B., have been appointed and have qualified as executor, (or administrator with the will annexed,) of C. D. Now we, A. B., principal, and E. F. and G. H., his sureties, do hereby covenant to and with the commonwealth of Kentucky, that the said A. B. will well and truly administer, according to law, the goods, chattels, credits, and effects that may come to his hands, and the proceeds of any sale, and the rents and profits of any estate which may come to his hands, or any one for him, by color of his office, which the will empowers him to sell, and will make a just and true account of all his actings and doings therein; and will further well and truly pay and deliver all the legacies specified in said will, as far as the goods, chattels, credits and other effects will extend. And we further covenant that he will make a proper distribution of any surplus effects to the persons entitled thereto. This day of

§ 6. Which bond shall be subscribed by the executor, or administrator with the will annexed, and his sureties, approved by the court, and attested by the clerk, and carefully kept by the latter in his office.

Certificate of probate unnecessary.

§ 7. A copy of the order, whereby a certificate is granted any personal representative for obtaining probate or letters of administration, shall be as effectual as the probate or letters made out in due form. But the clerk of the court making such order shall, when required by any personal representative, make out such letters and probate in due form, and certify the same under the seal of his court.

Indemnity bonds to be given by legatees & distributees.

§ 8. Before an executor, or administrator with the will annexed, shall pay or deliver over a legacy, or distribute the part not devised, he may require an obligation, with good surety, from the legatee or distributee, to refund due

proportions of any debts or demands which may afterwards appear against the testator, and the costs attending the recovery of the same.

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§ 9. The executors, or such of them as shall undertake the execution of the will, or if all, or more than one, undertake and part die, or vacate the office; the residue or survivor may sell the land which the will directs or devises to the executor or to another person to be sold, or gives a discretionary power to sell, if no other person be thereby appointed for that purpose, or if the person so appointed shall refuse to perform the trust, or die before he shall have completed it.

Power of executors to sell lands.

§ 10. The appointment of a debtor executor shall in no case be deemed an extinguishment of the debt, unless the will so direct.

§ 11. The executor of an executor shall have no authority, as such, to administer the estate of the first testator; but on the death of the sole or surviving executor of any last will, administration of the estate of the first testator, not already administered, may be granted, with the will annexed, to such person as would have been entitled to administration if the testator had died intestate.

Executor of an executor not to be executor of first testator.

§ 12. If there be no executor appointed by the will, or if all the executors therein named die, or refuse the executorship, or fail to give bond as required by law, which shall amount to such refusal, the court may grant administration with the will annexed, to the person who would have been entitled to administration if there had been no will.

Administrator with will annexed.

§ 13. An administrator with the will annexed, shall possess and exercise all power and authority, and shall have the same rights and interest, and be responsible in like manner, as the executors therein named, or any of them.

§ 14. If all the persons appointed executors are under the age of twenty-one years at the time of recording the will, or those who are of age refuse to qualify, or cannot give security, administration with the will annexed may be granted during such minority. But if a testator, by his will so direct, then such infant executor may qualify and give bond as an adult.

Infant executors

§ 15. When any personal representative shall commence a suit or action, or shall be sued, and shall die, be removed, or superseded by another, before the termination of the suit or action, his successor may, by order of court, be substituted in the place or stead of the original plaintiff, or defendant, the opposite party being notified of such order.

Successors of personal representatives.

§ 16. If an unmarried woman, who is a personal representative either alone or jointly with another, shall marry, her husband shall not be a personal representative in her right, but the marriage shall operate as an extinguishment of her authority, and the other personal representative, if there be any, may proceed in discharging the trust, as if

When a female representative marries.

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she were dead. If there be no other, administration *de bonis non* may be granted by the court.

Sheriff to ad-
minister.

§ 17. If all the executors named in any last will shall refuse to qualify, or shall refuse or be unable to give security, and no person shall apply for administration with the will annexed, or if no one who can give good surety shall apply for administration of the goods and chattels of any intestate, or if for any other cause there shall be no personal representative of a deceased person, it shall be lawful for the court having jurisdiction, after the expiration of three months from the death of such person, to order the sheriff of the county to take the estate of the decedent into his possession, and administer the same.

§ 18. The sheriff shall in such case, by virtue of his office, and the order of court, be the administrator, or administrator *de bonis non* of the decedent, with his will annexed, if there be a will, and shall thenceforward have all the rights and powers, and shall be bound to perform all the duties of such administration. His powers, rights, duties, and liabilities shall not expire with his office of sheriff. The court may, however, at any time afterwards, revoke such order, and allow any other person to qualify as executor or administrator.

A personal rep-
resentative may
be removed.

§ 19. When any personal representative shall reside out of the state, or become insane, or shall, after his qualification, become otherwise incapable to discharge his trust, the county court may, after citation, remove him; and his co-representative, if he has one, shall discharge the trust alone, as if the one removed were dead.

§ 20. If there be no other representative to discharge the trust, the court may appoint one who shall have the same power and rights and be liable to the same responsibility, as respects the estate unadministered, as the person removed.

Curator.

§ 21. During the contest about the probate of a will, or when the court, for any valid cause, shall be delayed in granting letters testamentary or administration, it may appoint a curator to collect and preserve the estate of the decedent, until probate of the will be granted, or until the cause for which such order was made shall be removed.

In such case the court shall take bond and good surety, from the person appointed, for the full and faithful performance of the trust confided to him. An appeal or writ of error from such order of court shall not suspend the powers of the curator.

§ 22. It shall be the duty of the curator to collect and safely keep the estate of the decedent, and to make, and return to court within three months, a full and complete inventory of the same. It shall be his further duty to deliver up the estate, when required, to the executor or administrator. He may pay debts, commence and maintain

a suit or action, and may be sued as such. He may sell such perishable and other goods as the county court may order to be sold, and shall be allowed a reasonable compensation for his services.

§ 23. No suit or action shall be commenced against any personal representative, until six months after he qualifies as such. If any be brought, the court shall dismiss the same with costs. This section shall not apply to executors *de son tort*, nor suits to procure a settlement of insolvent estates.

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Suits against personal representatives.

ARTICLE II.

Administrators.

§ 24. When any person shall die intestate, that court shall have jurisdiction to grant administration on his estate, that would have had jurisdiction to grant a certificate of the probate of his will, had he died testate.

§ 25. No original administration shall be granted after the expiration of twenty years from the death of the testator or intestate. If such grant be made it shall be void.

No administration after twenty years.

§ 26. The court having jurisdiction shall grant administration to the relations of the deceased, who apply for the same, preferring first the husband or wife, and then such others as are next entitled to distribution, or one or more of them, whom the court shall judge will best manage the estate.

Who entitled to administer.

§ 27. If no such person apply for administration at the second county court from the death of an intestate, the court may grant administration to a creditor, or to any other person in the discretion of the court. If a will shall afterwards be produced and proved, the administration shall cease, and the court may proceed to grant a certificate of the probate thereof, or, in the proper case, letters of administration with the will annexed.

§ 28. An administrator, at the time of his appointment, shall take the following oath: You do swear that

Oath.

died without any will, so far as you know or believe, and that you will faithfully perform and discharge the duties of administrator of said decedent, to the best of your judgment. So help you God.

§ 29. When administration shall be taken in this state, on the estate of any person who was an inhabitant of any other state or country, his personal estate found here, after payment of his debts, shall be disposed of according to his last will, if he shall have executed any according to the law of his domicil. If there be no such will, his personal estate shall be distributed and disposed of according to the laws of the state or country of which he was an inhabitant.

Non-resident decedents.

§ 30. Upon the settlement of such estate, after the payment of the debts in this commonwealth, the residue of the

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personal estate, if any, may be distributed and disposed of in the manner stated in the next preceding section, or it may be transmitted as the county court may think best and order, to the personal representatives, if there be any, in the state or country where the decedent had his domicil, to be there disposed of according to the law of the place.

§ 31. If such person has died or shall die insolvent, his estate found in this commonwealth shall be disposed of among all his creditors here and elsewhere, by distributing the part going to the creditors resident in Kentucky, and by paying over to the personal representatives of the domicil of the decedent, under the order of court, the portion going to the non-resident creditors.

Bond.

§ 32. Each administrator shall, at the time of his appointment, give bond and sufficient surety, in substance as follows:

Whereas, I, A. B., have been appointed by the county court of _____ administrator of _____ deceased. Now we, A. B., administrator, and C. D. and E. F., his sureties, do hereby covenant to and with the commonwealth of Kentucky, that the said A. B. will well and truly administer the goods, chattels, credits and effects of the said intestate, according to law, and will further make a just and true account of all his actings and doings therein; and will well and truly make a proper distribution of any surplus money, effects, and rents which may come to his hands, or to any one for him, by color of his office, to the persons entitled thereto. If it shall hereafter appear that a last will and testament was made by the deceased, and the same be proved and recorded, we further covenant that the said A. B. will, in such case, surrender his letters of administration, and that he will account with and pay and deliver over to the executor, or administrator with the will annexed, the assets in his hands unadministered. This day of _____

§ 33. Which bond shall be subscribed by the administrator and his sureties, approved by the court, and attested by the clerk, and safely kept in his office.

Indemnity
bonds by dis-
tributees.

§ 34. Before an administrator shall make distribution, each distributee shall, if required, give an obligation, with good surety to refund due proportions of any debts or demands which may afterwards appear against the intestate, and the costs attending the recovery of the same.

Remedies in
relation to sure-
ties.

§ 35. If the sureties in the bond of any personal representative shall be or become insufficient, the county court, on the motion of any one interested, or on its own knowledge of the fact, after notice to such representative, may require an additional bond and surety, on which, and the original bond, a joint action or suit may be maintained; and upon a failure to give such additional bond and surety, the court may revoke the authority of such representative,

and appoint another in his stead, taking proper bond and surety.

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§ 36. Where the surety of any personal representative shall notify his principal thereof, the county court may, on motion, if it shall be made appear that the principal is in doubtful circumstances, rule such principal to give county surety, or make such other order as shall be just and proper.

§ 37. Where any letters of administration shall be revoked, or where any executor or administrator shall be removed, or the will under which he acted shall, by the competent authority be declared invalid, all previous sales of personal estate, made lawfully by the executor or administrator, and with good faith on the part of the purchaser, and all other lawful acts done by such executor or administrator, shall remain valid and effectual. But pending a suit or procedure to set aside or reject the will, there shall be no power to sell the land or slaves of the deceased, except by or under a decree of court.

Acts of personal representatives under invalid wills.

§ 38. The court granting a certificate of probate or of administration shall appoint three persons appraisers, in each county where any estate to be managed by such representative shall be, any two of whom may act, being first sworn faithfully to discharge the duty assigned to them, to the best of their judgment. It shall be their duty to view and appraise such estate as the personal representative shall exhibit to them, and subscribe and return such appraisement to the clerk's office of the court appointing them, within three months after such appointment. If the appraisers believe the whole personal estate has not been exhibited to them, they shall report the fact to the court.

Inventory and appraisement.

§ 39. The personal representative may sign the appraisement, and it shall be thereby considered an inventory of the estate that had come to his hands.

§ 40. Each personal representative, whether it be necessary for the payment of debts or not, shall, within a reasonable time after he is qualified, sell at public sale, on a reasonable credit, such goods of the decedent, (specific legacies excepted,) as are liable to perish, be consumed, or rendered worse by keeping, and shall take an obligation, with good surety, from the purchasers for the payment of the sale money.

Perishable property to be sold.

§ 41. If more be sold than will pay the debts and expenses incident to the administration, the personal representative may assign the obligations for the surplus to the persons entitled to the estate, and be discharged as to so much.

§ 42. If the perishable goods be not sufficient to pay the debts and expenses, the personal representative shall proceed to sell such of the other goods, disposing of the slaves last, until the debts and expenses be all paid, having regard to the privilege of specific legacies.

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Inventory and
sale bill to be
returned.

§ 43. Unless it be necessary for the payment of debts, and the testator so direct, his estate need not be sold, but may be preserved in specie.

§ 44. It shall be the duty of a personal representative of a decedent to return an inventory and sale bill of his estate, the former within three months from the time of qualifying as such, and the latter within sixty days after the sale, to the clerk's office of the court in which he qualified, which shall be recorded by the clerk; copies from the record of the inventory or appraisement shall be *prima facie* evidence for and against such representative.

Pay of ap-
praisers.

§ 45. Appraisers shall be entitled to one dollar per day each, for their services, to be paid by the personal representative out of the estate.

County court
to enforce re-
turn of invento-
ry and sale bill.

§ 46. If any personal representative shall fail, for six months, to return an inventory or sale bill, as herein required, the clerk of the county court shall report the fact to the court, and such representative shall be notified, and proceedings taken, by fine or otherwise, at his cost, to compel him to make such return.

Account to be
settled.

§ 47. It shall be the duty of every personal representative to have his accounts settled, and such settlement, and the vouchers to sustain the same, returned to the county court within two years after he qualifies, and as often thereafter as the court may require; which settlement shall be recorded by the clerk, and the original and the vouchers accompanying the same shall be carefully kept by him in his office.

Interest on
surplus in hands
of administrator

§ 48. A personal representative, after the expiration of two years from the time he qualifies as such, shall be presumed to have used the surplus assets in his hands, and shall be charged with interest thereon from that period, unless he proves that he did not use or make interest on such assets.

Estates for life.

§ 49. An estate held by a deceased person for the life of another, shall go to the personal representative of the deceased, and be assets in his hands, and be applied and distributed as the personal estate.

Estates of per-
sons dying after
March first.

§ 50. The slaves in possession of a person who shall die after the first day of March, whether held for life or other uncertain period, and which were employed in making a crop, shall be continued on the plantation in the occupation of the decedent, until the last day of December following, and then delivered to those who shall have a right to demand the same, well clothed. If the slaves are held for the life of the decedent, his personal representative shall pay out of the estate, to the person entitled to the slaves in reversion or remainder, a reasonable hire for the same, from the death of the decedent until the end of that year.

§ 51. All the emblements of the lands of a person who shall die after the first day of March, which shall be severed

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before the thirty-first day of December following, shall be assets in the hands of his personal representative. But all the emblements growing on the lands on the last named day, or at his death, if that shall happen after the thirty-first of December and before the first day of March, shall pass with the land to the heir, devisee, reversioner, or remainder man.

§ 52. If the tenant for life, of land or slaves, let or hire the same to another for the year, and die after the first day of March, the lessee or person hiring shall hold the land or slaves until the last day of December following, but shall deliver the slaves well clothed, and shall pay a reasonable rent or hire from the death of the tenant for life.

§ 53. When a person who has a freehold or other uncertain interest in land, or the use for life, or for other uncertain term in slaves, shall rent out the land or hire out the slaves for the year, and die before the rent or hire shall become due, the rent of the land or hire of the slaves shall be apportioned between the personal representatives of the deceased, and the person who shall succeed to the land or slaves as heir, personal representative, devisee, or person in reversion or remainder, unless in the case of a devisee the will shall otherwise direct.

How rent or hire is to be divided.

§ 54. No personal representative shall be liable for more than the amount of assets which have or may come to his hands to be administered, on account of having failed to plead or make defense, or on account of any plea that he may plead, but the judgment of the court shall only render him liable for the amount of assets in his hands unadministered.

Personal representative not liable for failure to plead.

§ 55. It shall not be lawful for any county court to accept as surety, in any bond of a personal representative or guardian, any master or other commissioner whose duty it is to settle the accounts of such fiduciary, or any judge or clerk of a county court, or practicing attorney of such court. Nor shall any master or other commissioner be appointed an administrator.

Sureties for personal representatives.

§ 56. If the personal estate of a decedent be not sufficient to pay his liabilities, then the burial expenses of such decedent, and the costs and charges of the administration of his estate, and the amount of the estate of a dead person, or of a ward, or of a person of unsound mind, committed by a court of record, and remaining in the hands of a decedent, shall be paid in full before any *pro rata* distribution shall be made; all other debts and liabilities shall be of equal dignity, and paid ratably in the administration of his estate; and should more than the ratable share of any debt be paid, his personal representative shall only receive credit for its proper proportion.

Insolvent estates.

§ 57. When such an estate is covered by *bona fide* liens, giving a creditor a priority on such property, the proceeds

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thereof shall be first applied to the discharge of such lien, and the residue shall be subject to a *pro rata* division among the other creditors. But when any creditor has a lien, and the property subject to the lien is not sufficient to discharge the debt, he shall not be entitled to any portion of the residue of the estate, until all the creditors not having liens shall have received a sum equal, *pro rata*, with such lien creditor.

How demands
to be verified.

§ 58. All demands against the estate of a decedent shall be verified by the written affidavit of the claimant, or in his absence from the state, by his agent, or if dead, by his personal representative, stating that the demand is just, and has never, to his knowledge or belief, been paid, and that there is no just off-set or discount against the same, or any usury embraced therein.

§ 59. If any part of the demand has been paid, or there be any just off-set or discount against the same, or any usury embraced therein, the affidavit shall state the amount of the payment or usury, when the payment was made, and when the off-set or discount was due, to the best of the affiant's knowledge and belief. The verification as above shall not be held to dispense with other proof as heretofore required by law. No recovery shall be had of any such demand until such affidavit be made and filed in court.

§ 60. No demand against a decedent's estate shall be paid by his personal representative, or allowed as a credit by any commissioner or court, which is not verified by affidavit as above required.

§ 61. In a proceeding to coerce a claim against the estate of a decedent, his personal representative shall have the right to compel the attendance of the claimant, the original obligee, or intermediate assignors, and interrogate any of them touching the usury embraced in the claim, a payment of all or a part thereof, or of the existence of an off-set or discount against the same.

§ 62. No personal representative shall pay or be adjudged to pay any more of any demand against the decedent's estate, than what remains due of the same after the usury embraced therein, and the payments made thereon, and the off-sets and discounts against the same, are deducted.

§ 63. When a personal representative shall pay to a creditor an undue proportion of his demands, or to a distributee or devisee a part or all of his share or legacy, under a mistake as to the solvency of the estate, or otherwise, such personal representative may recover from the creditor, distributee, or devisee, the amount of the overpayment with interest thereon.

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CHAPTER X.
CITIZENS, EXPATRIATION, ALIENS.

Citizens.

ARTICLE I.

§ 1. All free white persons born in this state, or in any other state of this union, who may be or become residents of this state, all free white persons naturalized under the laws of the United States, who may be or become residents of this state, all persons who have obtained a right to citizenship under former laws, and every child, wherever born, whose father or mother was or shall be a citizen of this state at the birth of such child, shall be deemed a citizen of this state.

Who are citizens.

Expatriation.

ARTICLE II.

§ 1. Whensoever any citizen of this state, by deed in writing in the presence of and subscribed by two witnesses, and acknowledged or proved in the county court of the county in which he resides, or by open declaration made in such court and entered of record, shall declare that he relinquishes the character of a citizen of this state, and shall depart out of the same, with the intention, in good faith, to remain absent therefrom, such person shall, from the time of his departure, be considered as having exercised his right of expatriation, so far as regards this state, and shall not thenceforth be deemed a citizen thereof.

§ 2. When any citizen of this state shall reside elsewhere, and in good faith become a citizen of some other state of this union, or the citizen or subject of a foreign state or sovereign, he shall not, while the citizen of another state, or the citizen or subject of a foreign state or sovereign, be deemed a citizen of this state.

§ 3. No such act of becoming the citizen or subject of a foreign state or sovereign, and no act under the section but one next preceding, shall have any effect, if done while this state or the United States shall be at war with a foreign power.

• *Aliens.*

ARTICLE III.

§ 1. An alien, not being an enemy, who shall have actually resided in this state two years, shall, during his residence after that period, be enabled to receive, inherit, hold, and pass by descent, devise, or otherwise, any interest in real or personal property, in the same manner as if he were a citizen of this state.

Alien may hold real estate after two years residence.

§ 2. Any alien, being a free white person, who shall have purchased, or contracted to purchase, any real estate, or who shall hold or have title thereto, and who shall become

Effect of citizenship after acquiring real estate.

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a citizen of the United States before the same is escheated by a proper procedure, and any such person, who shall hold or have title to any such estate, who shall sell, lease, or devise the same, or die seized or possessed thereof, before any proceeding shall be instituted for the purpose of escheating the same, such person in the first case, and in the second the purchaser, lessee, heir, or devisee from him, if a citizen of the United States, shall take and hold the same, free and released from any right or claim of the commonwealth, by reason of such person's having been an alien.

§ 3. Any woman whose husband is or shall be a citizen of the United States, and any person whose father or mother, at the time of his birth, was or shall be a citizen thereof, although born out of the United States, may take and hold real or personal estate, by devise, purchase, descent or distribution.

§ 4. An alien, the subject or citizen of a friendly state, may take and hold any personal property, except chattels real, and any such alien, if he reside within this state, may take and hold any lands for the purposes of residence, or of occupation by him or his servants, or for the purpose of any business, trade or manufacture, for a term not exceeding twenty-one years.

An alien, so taking and holding, shall have like rights, remedies and exemptions, touching such property, as if he were a citizen of the United States.

CHAPTER XI.

CONTRIBUTION.

ARTICLE I.

§ 1. The extent of recovery, in cases of contribution, shall be the same in courts of law that it is in a court of equity.

Contribution
given between
devisees.

§ 2. When any estate, real or personal, which has or shall be devised, shall be taken from the devisee for the payment of a debt of the testator, or one of the devisees shall pay such debt to save his devise, each of the other devisees shall contribute his proportion of the debt, interest, and costs, to the person so paying the same, according to the value received by him, except as hereinafter provided.

§ 3. If the testator shall, by his will, have made any other provision for the payment of his debts, then the preceding section shall not apply or take effect, except to the extent that such provision and the testator's undevise estate shall be deficient. But the remedy of such devisee, in the first instance, shall be against the person holding the provision, and against the undevise estate.

§ 4. A residuary legatee, or legatee after or subject to the payment of debts, or a devisee to whom an estate has

or shall be devised to pay debts, shall not, after paying such debts, be entitled to contribution.

§ 5. As respects the payment of the testator's debts, there shall be no distinction between specific and general devises, except as herein provided.

§ 6. When any real or personal estate shall be devised to any one of the heirs at law of the testator, and the title to the same, or any part thereof, shall prove invalid, such devisee shall have contribution from the others, unless it shall appear from the will that such was not the intention of the testator.

§ 7. When a testator shall have a posthumous child, the share of such child shall be first taken from the estate not disposed of by the will, if any be left after paying debts and other charges, and the residue shall be made up ratably by the devisees.

§ 8. A posthumous child shall be considered a devisee under the law of contribution, and entitled to all his rights, and liable to all his responsibilities.

§ 9. The insolvency or non-residence of any person liable to contribution shall affect the rights of the others in like manner as the insolvency of one co-obligor affects the others.

§ 10. Contribution shall take place between heirs and distributees, on the same principles as between co-obligors.

§ 11. Contribution shall take place between all persons who may become jointly liable, by civil action, for any act or omission, in a trust or official capacity, hereafter done or omitted.

§ 12. The same rights and responsibilities shall continue in favor of and against the representatives of a person entitled to or bound to make contribution, who dies, as if he were living when contribution is demanded, and the same principle shall apply, when more than one die.

§ 13. When a widow's dower shall be taken, or her portion shall be made up, in whole or in part, from the estate devised to a devisee, such devisee shall have contribution on the principles of this chapter, unless the will otherwise directs, or it is necessarily to be inferred therefrom that the testator intended the same to fall on such devise.

§ 14. When a widow shall lose her jointure, by a defect of title, or shall renounce the same in a legal manner, and shall have her dower or portion assigned her or made up, in whole or in part, from the estate devised to a devisee, such devisee shall have contribution on the principles of this chapter.

§ 15. This chapter shall not be held to affect the provisions of this revision in relation to property devised which may be subject to a lien.

§ 16. In all cases of contribution, interest shall be allowed from the time that the right accrues.

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Specific and general devises.

Contribution allowed an heir in certain cases.

Portion of a posthumous child.

The right of contribution survives.

Contribution to be allowed a devisee when widow's thirds are taken.

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CHAPTER XII.

ATTORNEYS.

ARTICLE I.

Attorneys at law.

§ 1. No person shall be licensed to practice as an attorney at law who shall not be, at the time, twenty-one years old.

Certificate of honesty, &c., to be obtained.

§ 2. Before a license shall be granted to any person to practice as an attorney at law, he shall obtain a certificate from the county court of the county in which he resides, that he is a person of *honesty, probity, and good demcanor*, which may be granted upon its own personal knowledge, or on evidence.

License to be granted only to those who are qualified.

§ 3. Upon the production of such certificate to any two judges of the court of appeals, or any two circuit judges, or a circuit judge and the chancellor of the Louisville chancery court, it shall be their duty to examine the applicant thoroughly, touching his qualifications as a lawyer, and if, thereupon, they believe that he is qualified to practice as an attorney at law, they shall grant him a license accordingly, otherwise they shall refuse such license.

§ 4. Any judge who shall knowingly grant a license to practice law to any person not qualified, and whom he has not properly examined to ascertain the fact, shall be considered guilty of a high misdemeanor.

No person to practice law, except in his own case, without license.

§ 5. No person shall practice as an attorney at law in any court, until he has obtained a license to do so, and taken the oath in such court enjoined by the constitution. But a person who is not a licensed attorney may attend to his own case.

§ 6. Any person not having such license, who shall attempt to practice law in any court, in any other than his own case, shall be liable to be presented and *imprisoned*, at the discretion of a petit jury.

Liabie for neglect of duty.

§ 7. When an attorney at law shall be employed to attend to any professional business, and shall neglect to attend to the same, and his client shall, by such neglect, be damaged; or if such attorney shall attend to the business so unskillfully that his client shall be damaged, such attorney shall be liable to the party injured for all costs and damages he shall have sustained.

§ 8. Upon the request of the party so injured, it shall be the duty of the attorney for the commonwealth to institute and prosecute his suit. If it be taken to the court of appeals, the attorney general shall attend to it for the party injured.

§ 9. An attorney who shall be employed in any professional business and receive his fee, and shall not attend to such business, may be sued in any court having jurisdiction of the amount, and made to refund the same.

§ 10. If an attorney at law shall collect the money of his client, and on demand wrongfully neglect or refuse to pay over the same, the circuit court of the county in which the money may be collected, may, after notifying the attorney to show cause against the same, suspend him from practice in any court for twelve months, and until the money shall be paid.

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Attorneys may be suspended from practice.

§ 11. Before any such motion shall be entertained, a demand of the money shall be made of such attorney in the county of his residence, and no such proceeding shall take place unless it is commenced within two years next after the collection of the money.

§ 12. It shall be the duty of the commonwealth's attorney for the district to attend to the proceedings in the circuit court under the tenth and eleventh sections, and the duty of the attorney general to attend to the same in the court of appeals.

Delinquent attorneys.

ARTICLE II.

County court attorneys.

§ 1. Each county court attorney shall attend all county courts held in his county, and shall superintend and conduct all cases and business in the court, touching the rights or interests of the county.

Their duties.

§ 2. He shall give the court and each of its members, the jailer and each of the justices and constables of his county, legal advice concerning any county business within the jurisdiction of any of them. He shall conduct suits, motions and prosecutions of every description within the jurisdiction of the county court, in which the county shall be interested.

§ 3. He shall attend the court of claims, and oppose the allowance of all claims that are not legally presented, or are unjust.

§ 4. It shall be his duty to oppose the improper grant of tavern license, and to prosecute an appeal to the circuit court, without security if he thinks a license is improperly granted.

§ 5. He shall attend to the prosecution of all riots, routs, and breaches of the peace in his county, except in the circuit court, and shall in no instance take a fee in the defense of such case, or act as counsel in any case in opposition to the interest of the county.

§ 6. He shall oppose the wrongful alteration or discontinuance of any public road.

§ 7. He shall be allowed annually, at the court of claims, a reasonable salary out of the county levy.

How paid.

ARTICLE III.

Attorney for the Commonwealth.

§ 1. He shall attend each circuit court held in his district, and prosecute all infractions of the criminal and penal

Duties.

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laws therein, and he shall discharge all other duties assigned to him by law.

Salary.

§ 2. Each commonwealth's attorney shall receive annually a salary of three hundred dollars, payable quarterly out of the public treasury, commencing from the time of his qualification under his commission.

When absent.

§ 3. In the absence of the commonwealth's attorney, at any term, or part of a term of a circuit court in his judicial district, the judge of such court shall appoint some suitable attorney to act in his place during his absence. He shall enter up an order making a reasonable allowance to be paid out of the public treasury to the person so appointed, and the same shall be deducted from the annual salary of the commonwealth's attorney; a copy of which order shall be forwarded by the clerk of the court to the auditor of public accounts.

In what cases
not to have a
fee taxed.

§ 4. He shall have no taxed fee in any case in which the right of trial by jury is not guaranteed by law. When any law gives an attorney for the commonwealth a part of what is recovered in a prosecution, the part so given shall be held to be his fee in that case.

ARTICLE IV.

Attorney General.

Duties.

§ 1. It shall be the duty of the attorney general, on the application of the governor, register, auditor of public accounts, the treasurer of the state, the president of the board of internal improvement, or of any attorney for the commonwealth, to give such officer his opinion in writing touching any of the duties of his office.

§ 2. The attorney general shall attend to all cases in behalf of the commonwealth, in which she may be interested, in the general court, in the federal court for the district of Kentucky, or in the court of appeals.

Salary.

§ 3. He shall receive for his services an annual salary of three hundred dollars, to be paid quarterly out of the public treasury, and he shall be allowed a taxed fee of five dollars in each case to which he attends in either of said courts, in which the commonwealth shall prove successful, to be taxed in the bill of costs and collected from the opposite party.

To collect debts
due the state.

§ 4. It shall be the duty of the attorney general to institute the appropriate procedure, to coerce the payment of all debts, dues, and demands of the commonwealth, payable at the state treasury, which shall not be discharged in proper time.

§ 5. In all cases which have or may be decided by any of the inferior courts against the interest of the commonwealth, it shall be lawful for the attorney general to prosecute a writ of error to the court of appeals, which he may do without security.

§ 6. He shall, when requested by any of the executive or state officers, prepare proper drafts of contracts, obligations, and other instruments of writing, which may be wanted for the public use.

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CHAPTER XIII.
LAWS.

§ 1. The decisions of the courts of Great Britain, rendered since the fourth day of July, one thousand seven hundred and seventy-six, shall not be of binding authority in the courts of Kentucky, but may be read in court and have such weight as the judges may think proper to give them.

British decisions.

§ 2. The session acts and resolutions of the general assembly, heretofore or hereafter published, the editions of the statutes of Kentucky, by Daniel Bradford, by Wm. Littell, by Littell and Swigert, by Morehead and Brown, and in part by Preston S. Loughborough, this revision, and the edition of the Virginia statutes, by William Waller Hening, shall be received as evidence in the courts and tribunals of this state.

Acts of assembly.

§ 3. An act of assembly shall take effect two months from and after the time it shall be approved by the governor, or if passed against his objections, from the period of such passage; unless a different time be fixed by the act.

When acts of assembly take effect.

§ 4. The day of the approval of an act of assembly by the governor, or if passed against his objections, the day it so passes, shall be stated at the end of the same.

§ 5. Acts of incorporation and private acts of the general assembly may be declared on and given in evidence without being specially pleaded.

Private acts.

§ 6. The acts and resolutions of each session of the general assembly shall be printed and half bound in paper, in pamphlet form, in two parts; the first containing the general acts, the second the local or private acts; and there shall be to each a well arranged index.

Acts, &c., to be printed.

§ 7. All the copies of the acts of the general assembly, which may be printed for the state, shall be delivered over to the secretary thereof, and by him distributed as hereinafter directed.

§ 8. The following persons shall each be entitled to one copy of the session acts of the general assembly, hereafter published, by virtue of their respective offices, to-wit: members of the general assembly, the auditor, register, and treasurer, the attorney general, circuit and county attorneys, and justices of the peace, the clerk of each court, secretary of state, the president of the board of internal improvement, and each judge of a court; the clerk of the senate shall be entitled to ten copies for the use of that body, and the clerk of the house of representatives to thirty copies for the use of that house.

Who entitled to copy of acts.

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Duty of secretary of state.

§ 9. The secretary of state shall annually transmit to the executive of each of the other states, and also the secretary of state for the United States, two copies of the session acts.

§ 10. Each officer of this state, (except the members of the general assembly,) who shall receive any book under this or any act of assembly, shall hold the same as public property, and as an appendage to his office, and when he shall vacate the same, the books shall be delivered over to his successor.

§ 11. It shall be the duty of the respective officers to take good care of the books delivered to them. The clerk of each court shall keep the books entrusted to him in his office, for the use of the public.

Journals.

§ 12. The members of the general assembly shall each be entitled to one copy of the journal of each house, the session such member may serve, and each clerk of a county and circuit court shall be entitled to one copy, the secretary of state to two copies for the use of his office, the clerk of the senate five copies for the use of the senate, the clerk of the house of representatives to ten copies for the use of the house.

Who entitled to copy of this revision, &c.

§ 13. The following persons shall each be entitled to one copy of the code and of this revision: each of the judges and clerks of the courts in this commonwealth, and the judges and clerk of the federal court for Kentucky; each member of the two boards of commissioners to simplify the rules of practice, and to revise the statutes, the attorney general, and each county court attorney, and each attorney for the commonwealth; the governor, secretary of state, register, auditor of state, and treasurer of the state, and the president of the board of internal improvement; the superintendent of public instruction, the sergeant of the court of appeals, the adjutant and quartermaster generals, the sheriff, assessor, and the justices of the peace, of each county.

Decisions of court of appeals

§ 14. The following persons shall each be entitled to one copy of the reports of the decisions of the court of appeals which may be hereafter published: the judges of the court of appeals, of the circuit and county courts, of the general court, and of the federal court for Kentucky, and the clerk of each of said courts.

§ 15. The reports of decisions of the court of appeals shall be designated by placing the following words in the title page, "Property of the State of Kentucky;" and the binder shall press on the cover the same words, and each and every officer who may receive books under this act, shall write in the same the name of the office to which it belongs.

Acts of congress.

§ 16. The members of the general assembly, the judges and clerks of each of the state courts, the attorney general,

the circuit and county attorneys, and secretary of state, shall each be entitled to one copy of the acts of congress which may be sent to the state for distribution.

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§ 17. The clerk of each court in this state shall, on or before the first day of September in the year 1851, and every fourth year thereafter, make out and present to the presiding judge of his court a list of all the law books which he has received on the public account, and another list of those remaining in his office; which list, being duly certified by the clerk and examined by the judge, shall be recorded in the office of said court, and a copy shall be transmitted by the clerk to the secretary of state, to be filed in his office.

Duty of clerks of courts.

A clerk who shall fail at any term of his court to furnish any of said books, shall be fined at the discretion of the court, not exceeding ten dollars.

§ 18. The acts of assembly, journals of each house, and books of reports, shall, when bound, be deposited in the office of the secretary of state, and it shall be his duty to pack up the same in a suitable manner for each county, with a list of the names of those who are entitled to the same. He shall give three weeks notice, in two of the newspapers printed in Frankfort, when and where he will let the delivery and distribution thereof to the clerks of the county courts. He shall divide the state into three districts of as nearly equal size as may be, and shall, on the day and at the place stated in the publication, let the duty to be performed in each district to the lowest bidder, and shall take from each contractor bond and good surety, payable to the commonwealth, conditioned for the faithful discharge of his duties within forty days.

Further duty of secretary of state.

But the whole amount to be paid for such distribution shall not in any year exceed one thousand dollars.

§ 19. Upon the contractor's producing to the secretary of state the receipt of the clerk of each county, containing a list of all the books delivered to such contractor, he shall certify the same to the auditor of public accounts with the amount due thereon; whereupon the auditor shall issue his warrant on the treasury for the same.

§ 20. It shall be the duty of each clerk of the general assembly, for the time being, at the close of each session, to collect all the books belonging to their respective houses, and to make out a complete list of the same, and have the books carefully boxed up. The same shall then be delivered to the state librarian, whose duty it shall be carefully to preserve the same, so as to have them forthcoming at the commencement of each succeeding session of the general assembly.

Duty of clerks of each house.

§ 21. When the statutes furnished any court shall be lost, mutilated, or torn, it shall be lawful for the court to procure an additional copy, and certify the cost thereof to the audi-

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tor of public accounts, who shall issue his warrant on the treasury for the same.

§ 22. There shall be no books or reports distributed at the public expense, at any other time, except when the session acts of the general assembly and journals are distributed.

§ 23. An order may be made from time to time, by any of the courts, certifying what officers of such court or county, entitled to the same, have not been furnished with copies of this revision, or of the reports of decisions of the appellate court, or acts of the general assembly; and if such officers have been furnished in part, to certify what part has not been furnished; and the secretary of state, upon a receipt of a copy of such order, shall send to those counties the copy so required. In procuring the same he shall not exceed the price originally paid by the state for similar books.

CHAPTER XIV.
REVENUE AND TAXATION.

ARTICLE I.

Rate of taxation on real and personal estate.

§ 1. An annual tax of seventeen cents upon each one hundred dollars of value of the real and personal estate directed to be assessed for taxation, shall be paid by the persons assessed—ten cents thereof for the ordinary expenses of government, five cents for the use of the sinking fund, and two cents for the support of common schools.

§ 2. The following description of personal estate, viz: gold, silver, and other metallic watches; clocks composed, in whole or in part, of metal or wood; gold and silver plate; piano-fortes; riding or pleasure carriages, buggies, and gigs; stage coaches, omnibuses, and all descriptions of vehicles for the transportation of persons or passengers, by whatever name known or called, including the harness thereof, whether in use or not, shall be taxed thirty cents upon each one hundred dollars of the value thereof, except such as are kept for sale in the store or shop of any merchant or manufacturer thereof. These shall be taxed as other estate owned by the merchant or manufacturer.

§ 3. Taxes shall be due and payable in the same year in which the estate is assessed.

§ 4. The commonwealth shall have a lien for the revenue tax and county levy on the estate of each person assessed for taxation, which shall not be defeated by sale or alienation.

ARTICLE II.

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Specific taxation on real and personal estate.

§ 1. On bank stock, or stock in any moneyed corporation of loan or discount, fifty cents on each share thereof, equal to one hundred dollars, or on each one hundred dollars of stock therein, owned by individuals, corporations, or societies.

§ 2. On the gross amount of the sales of drugs, medicines, or nostrums, owned by persons other than citizens of this state, and sent to this state and sold and retailed, five per cent., to be paid by the person or agent selling the same, to the clerk of the county where the same shall be sold, at the end and expiration of each three months, to be accounted for and paid over as other public moneys. The agent or vender of such drugs, medicines, or nostrums shall render, on oath, an account of the amount of such sales, and pay the tax as aforesaid. Any person violating the provisions of this section, or failing to perform the duties required thereby, shall be subject to a fine of fifty dollars, to be recovered by motion in the name of the commonwealth, before the circuit court, or by presentment or indictment by the grand jury.

§ 3. The tax on licenses shall be as follows:

On a license to keep a tavern, ten dollars.

On a license to a coffee-house keeper, or other person licensed by a city or town to retail spirituous liquors, ten dollars.

The tax on a license to keep a nine or ten pin alley, or bowling saloon, for twelve months, shall be as follows:

If the population of the county, including all cities and towns therein, shall exceed ten thousand souls, twenty dollars; if under that number, ten dollars. When the proprietor or keeper has more than one alley or table in the same building, he shall pay tax on each one.

On a license to sell or peddle goods, wares, or merchandise, on the Ohio, Mississippi, or any other river within this state, in any one county bordering on said rivers, or through which any such river may run, for twelve months, ten dollars.

§ 4. On a license to a merchant to sell spirituous liquors, five dollars. Licenses to merchants shall be granted by the county court only upon satisfactory evidence that the applicant is in good faith a merchant, and his business is that of retailing merchandise; and that he has not assumed the name and business of a merchant with the view and object of obtaining a license to sell spirituous liquors.

On a license to the keeper or owner of any itinerant or other menagerie, circus, or theatrical performance, one dollar per day for each days' exhibition thereof for each one hundred voters resident in the county in which such exhi-

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bition, show, or performance may be made, exclusive of cities whose population is above twenty thousand souls, in which cities the tax shall be twenty dollars for each day. The number of days for which the license is granted shall be stated on the face thereof.

On a license to a peddler for the whole state, fifty dollars for twelve months. The license shall give a description of the person to whom it is granted; and before peddling in any county other than the one in which the license was issued, he shall present the same to the clerk of such county, who, upon being satisfied, shall certify to the genuineness of his license. A failure so to present his license shall subject the peddler to the same penalty as though he had peddled without a license. On a license to a peddler of watches, silver-ware, jewelry, or gilt-ware; or of goods, wares, and merchandise; or to peddlers and itinerant vendors of pills, medicines, and nostrums, twenty dollars for twelve months, for each county named in the license. On a license to a clock peddler, twenty dollars for twelve months, for each county named in the license.

§ 5. On a license to sell or peddle for three months, in one or more counties, for each one hundred voters in the counties named in such license, fifty cents.

On a license to peddle goods or clocks, or other commodity in a county, exclusive of the city or town thereof whose population is above forty thousand, for three months, fifty cents for each one hundred voters in said county, exclusive of those resident in the city or town; the number of voters to be ascertained by the assessors' books.

On a license to peddle goods, merchandise, or clocks, in a city or town whose population exceeds forty thousand, for twelve months, thirty dollars; for six months, twenty dollars; and for three months, ten dollars.

On a license to stand a stud horse, jack, or bull, in the state of Kentucky, an amount equal to the greatest sum charged for the service of the same, whether that sum be for the season or insurance; which license shall expire on the thirty-first day of December, in each year. The applicant for such license shall state, on oath, the largest amount he intends to charge, directly or indirectly, for the services of said stud, jack, or bull; and if in property or other thing, the value of the same.

§ 6. A license to keep a tavern shall be granted in the mode prescribed by the law regulating taverns and tavern-keepers; all other licenses named in this article, except licenses to merchants to retail spirituous liquors, shall be granted by the clerk of the county court, under the seal of his office, upon the applicant producing to him the receipt of the sheriff of the county of the payment of the tax, or payment of the same to the clerk, and taking the oath before the clerk, as required above.

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§ 7. But one person, and he the person named in such license, shall sell under or exercise the privileges granted by the same. Licenses granted under this article are not assignable, nor shall the clerk give copies or duplicates thereof.

§ 8. No license shall be granted by the authorities of any town or city of this state, authorized to grant licenses to a tavern or coffee-house keeper, or other person, to retail spirituous liquors, or to keep a nine or ten pin alley or bowling saloon, until such applicant shall have paid to the clerk of the county court the state tax imposed by law; neither shall such license be granted for a longer time than twelve months. Persons required by this section to obtain a license, if they exercise the privileges thereof under a license granted by the authorities of a town or city, without having first obtained the license from the county clerk, as above required, shall be subject to the penalties and disabilities imposed for keeping tippling houses. If the person be the keeper or owner of a nine or ten pin alley or bowling saloon, he shall forfeit and pay two hundred dollars.

§ 9. A license to keep a nine or ten pin alley or bowling saloon shall be granted by the county court to persons of good character only, upon payment of the tax, and execution of a bond, with good surety, in the penalty of one hundred dollars, conditioned that no gaming, no riotous or disorderly conduct shall be allowed upon said alley, or within said saloon, or in the building containing the same. For a violation of the condition of his bond, the principal and surety, or either of them, may be proceeded against by suit or indictment, and, for each violation, the amount of the aforesaid penalty recovered for the benefit of the commonwealth.

§ 10. The keeper, owner, and all persons concerned, directly or indirectly, in setting up or keeping any nine or ten pin alley or bowling saloon, without first having obtained a license therefor, shall, jointly and severally, forfeit and pay the sum of one hundred dollars for each offense.

§ 11. The clerk shall, by the first day of September, in each year, report to the auditor of the state an abstract of the licenses granted by him and by the county court under this article, stating the amount of tax paid to him and to the sheriff for the same; also, the amount of other public moneys received by him for taxes or otherwise. The amount so paid and received shall be accounted for as other revenue.

§ 12. The following persons shall not be deemed peddlers:

Citizens of Kentucky who sell articles grown or manufactured by themselves.

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§ 13. Persons retailing goods, wares and merchandise, not the product or manufacture of this state, or offering to sell the same, other than a resident merchant who has listed his goods for taxation, shall be deemed peddlers.

§ 14. Tax on law process, the recording of deeds, powers of attorney, official copies and seals, shall be as follows, and paid in advance :

On each original suit or proceeding in law or equity, except proceedings before a justice of the peace, commenced with or without original process ;

On each appeal to the circuit court, from an inferior tribunal ;

On each traverse of forcible entry or detainer ;

On each procedure to revive a judgment or decree ;

On each deed or power of attorney to convey real or personal estate ;

On the seal of any court required by law to keep a seal—fifty cents.

On each writ of error from the court of appeals, one dollar.

On an appeal to the court of appeals, two dollars

On each verdict of a petit jury in the circuit court, four dollars. The same tax shall be paid when the parties withdraw a jury, or the plaintiff sustains a nonsuit after the jury is sworn.

On each copy of a patent or survey from the register's office, fifty cents ; copy of an entry or land warrant, twenty-five cents ; recording plat and certificate, and patent on same, twenty-five cents ; copy of an assignment, twelve and a half cents ; registering a survey and issuing a patent on same, one dollar.

On the seal of the commonwealth, two dollars.

§ 15. Clerks shall be allowed, upon a settlement with the auditor, five per cent. commission on all taxes or revenue collected by them.

§ 16. The secretary of state and the register of the land office shall render an account of all fees paid to them, verified by oath, on the first Monday in January in each year, and file the same with the auditor of the state, and pay into the treasury all fees and taxes paid to them, respectively. On failure thereof, beside their liability for the tax and money received, they shall each be fined one hundred dollars for every offense.

ARTICLE III.

Penalty on peddlers.

§ 1. If any peddler shall sell or offer to sell any commodity to a slave without the consent, in writing, giving to such peddler leave to deal with him by the master, owner, or overseer, he shall be fined fifty dollars for each offense, to be recovered by warrant before a justice of the

peace in any county in this state, or upon presentment of a grand jury; and upon a failure to pay the same, shall be confined in the jail of the county for thirty days.

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§ 2. Any person who shall, without a license, peddle goods, wares, or merchandise; drugs, medicines, or pills; clocks, watches, jewelry, or silver-ware; or other thing for the sale of which a license is required first to be obtained, shall be fined for each offense fifty dollars, to be recovered as is provided in the first section of this article, and shall be committed to the jail unless the fine is paid. In proceedings against peddlers under this article they shall be held to reasonable bail.

§ 3. Sheriffs, county attorneys, judges of the county courts, justices of the peace, police judges and marshals of towns and cities, and constables, shall see that the provisions of this chapter, which relate to licenses to be granted to peddlers, tavern keepers, and all others, are complied with, and prosecute offenders and delinquents in the name of the commonwealth, for violations of the same; and to that end may require all such persons to produce their licenses—a failure to produce which, when so required, shall be conclusive evidence against such person of his guilt.

§ 4. In all cases where a fine or penalty is imposed by the provisions of this and the other articles of this chapter, the mode of recovering and enforcing the same shall be by suit or indictment, in the name of the commonwealth, to be instituted without a prosecutor, unless in cases where a different mode may be directed or authorized. In cases where jurisdiction is given to justices of the peace, if the defendant require it, a jury shall be impaneled to try the facts.

ARTICLE IV.

Revenue specifically devoted to the Sinking Fund.

§ 1. If any person shall carry on, conduct, or engage, directly or indirectly, in the business of a broker or exchange dealer, by the purchase or sale of bank notes, money, bills of exchange, drafts, checks, treasury notes, state stocks, or stocks of the United States, or by the charge of premium for the acceptance or indorsement upon bills or negotiable paper, or shall by any other means carry on said business without a license, beside the tax imposed, he shall forfeit and pay to the commonwealth one thousand dollars.

§ 2. The annual tax on the license to a broker or dealer in exchange shall be as follows:

When the amount of capital employed, or business expected to be done, whichever is greatest, is under five thousand dollars, fifty dollars.

Over five thousand and under ten thousand dollars, seventy-five dollars.

Over ten thousand and under fifteen thousand dollars, one hundred dollars.

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Over fifteen thousand and under twenty thousand dollars, one hundred and twenty-five dollars.

Over twenty thousand dollars, one hundred and fifty dollars.

§ 3. The clerk of the county court shall grant to the applicant a license to carry on the business of broker or exchange dealer, when the following conditions are complied with :

The applicant shall state the place or the county at or in which he intends to carry on said business. He shall state, on oath, to be administered by the clerk, the amount of capital and the highest amount of business expected to be done. He shall pay to the clerk the tax due under the second section of this article. The certificate of which oath, and the receipt of the clerk for the tax, specifying the place in which the business is to be conducted, under the seal of office, shall be a license to the person applying, but to no one else ; and not to him in any other place.

§ 4. The tax on an agent of any insurance company or association of individuals, acting without the authority of an act of incorporation granted by the commonwealth of Kentucky, to effect insurance against losses or damage of any kind, to life or to property, on water or on land, in or out of this commonwealth, in any way or manner, or on agencies to grant annuities, shall be two dollars and fifty cents upon each one hundred dollars of the premium received, or agreed to be received, by such agent, or other person for him, for insurance effected or upon policies granted.

§ 5. The agents referred to in the foregoing sections shall, on the first Mondays in May and November, in each year, file with the clerk of the county court of the county in which he resides and transacts business, a true and correct list and statement of all such premiums received, or agreed to be received, within the six months next preceding, verified by his oath before the clerk, and pay to the clerk the tax aforesaid. The agent or person who violates any of the provisions of this and the two preceding sections, or fails to comply with the same, beside the amount of tax, shall forfeit and pay one thousand dollars ; and the principals of such agents shall also be liable to the like penalty, and may be proceeded against by proper remedies in law or equity, whereby to secure and compel the payment of the same.

§ 6. Before selling playing cards, by retail or otherwise, in this state, the owner, his agent, or the vender thereof, shall obtain from the clerk of the county in which such sale is made, a license to authorize him to sell playing cards by wholesale and retail. He shall execute bond, with approved surety, that he will pay to the clerk of the county court,

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at the end of each three months, twenty-five cents upon each pack of playing cards he may have sold within the last preceding three months; also, that he will file with the clerk a statement, upon oath, of the number of packs of cards sold. A violation of any of the provisions of this section shall subject the offender to the payment of fifty dollars for each offense, beside the tax secured by the bond.

The revenue collected under the provisions of the six preceding sections shall be placed to the credit of the sinking fund, upon the books of the treasury.

§ 7. Any person who shall keep a tavern or house of public entertainment, or any merchant who shall sell spirituous liquors, without having obtained a license therefor, shall, on conviction, pay sixty dollars. And any person who shall stand a stud, jack, or bull, without a license, shall be fined ten dollars, and three times the highest amount charged for the service of the same.

§ 8. All contracts for the sale of clocks, or of goods, wares, and merchandise, by peddlers, of spirits by tavern keepers, or for the use, service, or season of a stud, jack, or bull, without the license required by law, shall be void.

§ 9. When duties are required of persons, or acts are forbidden to them, in any of the articles in this chapter, and the penalty may not have been prescribed in the article, the penalty shall be one hundred dollars for each offense.

ARTICLE V.

What estate shall be listed for taxation—form of tax book.

§ 1. The tax book shall be in the following form:

[For form of tax book, see next page.]

LAWS OF KENTUCKY.

FORM OF TAX BOOK.

	Persons' Names.
	Land.
	Value of Land.
	Town Lots.
	Value of Town Lots.
	White Males over 21 years of age.
	Slaves over 16 years.
	Total Slaves.
	Value of Slaves.
	Horses and Mares.
	Value of Horses and Mares.
	Mules.
	Value of Mules.
	Jennies.
	Value of Jennies.
	Cattle.
	Value of Cattle over fifty dollars.
	Stores.
	Value of Stores.
	Studs, Jacks, and Bulls.
	Rates per Season.
	Tavern License.
	Children between 5 and 16 years old.
	Free White Persons that are Blind.
	Free White Persons that are Deaf and Dumb.
	Value under the Equalization Law.
	Total Value at 17 cents per \$100.
	Value of Pleasure Carriages, Barouches, Buggies, Stage Coaches, Gigs, Omnibuses, and other Vehicles for Passengers.
	Value of Gold, Silver, and other Metallic Watches and Clocks.
	Value of Silver Plate.
	Value of Pianos.
	Total Value at 30 cents per \$100.

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A sufficient number of blank copies thereof shall be printed by the public printer, under the direction of the auditor, and transmitted to the clerk and assessor of each county by the first day of January in each year.

§ 2. All estate, real and personal, and all interest in such estate, named and specified in the tax book aforesaid, shall be assessed for taxation, and the tax paid by the owner or possessor thereof, to the person authorized by law to receive the same.

§ 3. Houses of public worship, and lands held under the laws of this state by any denomination of christians for devotional purposes, to the extent of five acres; and the land upon which any seminary of learning is erected, to the extent of five acres, held fiducially or individually; and all libraries, philosophical apparatus, owned by any seminary of learning, and church furniture and books, held by any church for the objects and uses of christian worship, shall be exempt from taxation, and may not be listed with the assessor.

§ 4. Lands and town lots shall be valued for taxation, including the improvements thereon, without reference to any conflicting title.

ARTICLE VI.

The assessor, and his duties.

§ 1. Any person elected or appointed assessor of tax who shall fail to accept the office and assume the duties thereof, shall forfeit the sum of five hundred dollars.

§ 2. The assessor and his assistants, before they enter upon the duties of their office, in addition to the oath prescribed in the constitution, shall also swear that they will fix a fair and full value on all the property listed by them, without favor or partiality; that they will diligently search and inquire, so that no person is passed over or shall fail to have an opportunity to give in his list of taxable property; and that they will truly report all persons who shall fail and refuse to give in a list of their taxable estate after being duly called on for that purpose, or who have given in a false or fraudulent list, or refused to give in the amount of their residuary estate, as required by law.

§ 3. The assessor of tax shall also, at the same time, give bond with good surety for the faithful discharge of the duties of his office, which bond shall be kept by the clerk; and, for a violation or breach thereof, suit may be instituted at the instance of the commonwealth, or any person aggrieved, and recovery had thereon, from time to time, to the extent of the injury sustained.

§ 4. He may commence the duties of his office on the tenth day of January in each year, and shall complete his list and return his tax book to the clerk of the county by the first day of May in each year.

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§ 5. The assessor, or his appointed assistant, before he returns any one as a delinquent, shall apply at his residence for a list of his taxable property, and in case of his absence, leave a written notice with some white person of the household over sixteen years of age, of the time and place in his county such person shall meet the assessor and give in his list; and if he fail to attend and give in such list, then the assessor shall report the person to the clerk of the county court as delinquent.

§ 6. If the assessor report any one as delinquent, under the above section, without having performed the duties required of him in said section, he shall be fined ten dollars, and he and his surety shall be liable to suit upon his bond for damages.

§ 7. The county court shall certify to the auditor of the state the amount due to the assessor for his services under this article, after he shall have completed his tax book and returned the same. The amount allowed shall not exceed eight cents for each list of taxable estate, and the same shall be paid by the treasurer of the state upon the warrant of the auditor.

§ 8. Before the county court shall grant such certificate of allowance, the assessor, and his assistants, if any, shall take in open court the following oath: "I do swear that I have not received from any person a list of taxable property and returned the same, until the person rendering the list had made oath to the truth of the schedule." A deduction of fifty cents shall be made from the assessor's compensation for each list he shall fail to report for taxation. Twenty per cent. of the allowance for services shall be retained by the auditor until after the court of claims in the county of the assessor, on or before which time the sheriff shall report, on oath, to the county court a list of all persons, with their taxable estate, so far as known to him, who were omitted by the assessor. The report of the sheriff so far as approved by the court shall be certified to the auditor, who shall draw his warrant on the treasury in favor of the assessor for the amount due after making the deductions aforesaid.

§ 9. The assessor of tax and his assistants are authorized to administer the oaths required to be taken by persons listing their estate with them for taxation.

§ 10. All estate taxed according to its value shall be valued in gold and silver, as of the tenth day of January preceding; and the person owning or possessing the same on that day shall list it with the assessor and remain bound for the tax, notwithstanding he may have sold or parted with the same.

§ 11. Slaves shall be listed for taxation by the owner thereof, and not by the persons who may have possession by hire or upon bailment.

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§ 12. Persons listing their estate with the assessor shall state, separately, the tracts of land and number of acres in each tract, the value thereof and where situated, giving the water courses and description of title, as well as he knows; the number of town lots, in what town or city situated, and the value of each; the number of slaves over and under sixteen years of age, and value; the number of horses, mares, mules, and jennies, and their value; the number of cattle, and their value over fifty dollars; and also all other estate owned by them and subject to taxation, with the value thereof on the tenth day of January preceding.

§ 13. The assessor or his assistant shall administer to persons listing their property the following oath: "You do swear that this list of taxable estate, given in by you, contains a full and complete list, and the best description of the same you can give, of all and every species of property belonging to you, or in your possession subject to taxation, on the tenth day of January last; and that no removal of property or omission has been made, or any method or device adopted or practiced, whereby to evade the payment of taxes by you; and that you will true and perfect answer make to such questions as may be asked you concerning your taxable estate."

§ 14. At the same time the assessor shall require the persons referred to in the preceding section to fix, upon oath, the amount they were worth from all other sources, on the tenth day of January preceding, exclusive of the estate enumerated in said list, the crops growing on the land listed, articles manufactured in the family for its use, and provisions and poultry on hand for domestic consumption.

§ 15. Merchants and grocers shall list the goods and groceries on hand on the tenth day of April in each year. They shall state, on oath, the full value thereof, exclusive of the articles manufactured in families within this state. The assessor shall call upon all merchants and grocers within his county or district, for their list of taxable property, between the tenth day of April and the first of May in each year.

§ 16. Every person who shall import into this state goods, wares, and merchandise, or groceries, after the tenth day of April, before he sells or exposes to sale the same, or any part thereof, shall list the same with the clerk of the county court for taxation, in the county where situated, as required in the preceding section. A failure to give in such list shall subject the owner or person in charge of said goods to the penalty imposed upon peddlers selling without license, and also to be fined and trebly taxed, as other delinquents.

§ 17. The assessor shall, from his own knowledge and from the statements of the person listing property for taxa-

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tion, and such other evidence as he may be able to obtain upon oath of witnesses sworn by him, fix a full and fair value upon all the estate listed with him for taxation, which is taxed according to its value, and enter the same, with the value thereof, in the order and manner prescribed in the tax book, giving also the aggregate value.

§ 18. The assessor and his assistants, at the time of returning his tax book, shall give in a list of their taxable estate to the clerk, who shall administer the necessary oaths, and enter the list, with its value, in the tax book at the end thereof, attested by the clerk, and a failure or refusal to give in such list shall subject the assessor, and his assistants, if any, to the same penalties and liabilities imposed upon other persons for the like offense. The clerk shall proceed in the manner prescribed to the assessor, to obtain a list of said estate, and enter it upon the tax book, and report the person refusing or failing, as delinquent.

The assessor shall make and return, with his tax book, a list of the names of all tavern keepers, owners or keepers of stud horses, jacks, and bulls, who have obtained a license under this chapter. The list to be returned shall be copied in the book returned to the auditor.

§ 19. The assessor shall state in his tax book, in the appropriate place, and in its proper name or title, the persons, things, and information designated in the form of the tax book.

§ 20. In the year one thousand eight hundred and fifty-seven, and every eighth year thereafter, the assessor shall make due return, with his tax book, of the number of qualified voters resident within his county; and when a town or city within his county shall have assigned to it a separate representation, in either house of the general assembly, he shall make a separate report of the qualified voters in such city or town.

§ 21. If any person fail and refuse to give a list of his taxable property, when legally called upon for that purpose by the assessor or his assistant, or give in a false and fraudulent list, or refuse to give the amount he is worth, as required by the fourteenth section of this article, he shall be adjudged a delinquent, and fined not exceeding one hundred dollars and costs, and be subjected to the payment of three times the amount of the tax upon his estate.

§ 22. The assessor, at the time he returns his tax book, shall also return the names of all delinquents described in the preceding section, and shall, as to fraudulent delinquents, state in what the falsehood or fraud consists.

§ 23. The clerk shall issue a summons, in which he shall state the offense in general terms, against each of the delinquents, returnable to the next term of the county court, which shall hear and determine the case upon motion, giving to the defendant the right to have a jury to try the facts,

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if demanded; which jury shall be composed of by-standers, and summoned by the sheriff. If the defendant be found guilty, the court shall enter judgment for the fine, and triple tax and costs. The court shall fix the value of the taxable estate upon which to impose the tax from their own knowledge, upon the statement of the defendant made upon oath, or upon such evidence as they may be enabled to obtain; and execution shall issue for the fine, triple tax, and costs. The fine and tax shall be certified by the clerk to the auditor of the state, and accounted for by the sheriff as other public moneys.

§ 24. When it shall be known to the sheriff that any person has failed to give in a list of his taxable property in any year when it shall be liable to taxation, he shall report such person to the clerk of the county, to be dealt with, fined, and taxed, as delinquents reported by the assessor. No sheriff or assessor shall be liable to costs in proceeding against delinquents reported by them.

§ 25. Any person who has failed to give in his list of taxable property because he was not called upon by the assessor, may, after the assessor has returned his tax book, list the same with the clerk of the county court, at any time before the first day of September, who, on taking the same, shall be governed by the law regulating the duty of the assessor of tax.

§ 26. The county court, before a judgment is given against a delinquent, may, if they are satisfied that the defendant was not wilfully in default, direct the clerk to take the list of taxable property of such delinquent in the manner prescribed by law. The lists aforesaid shall forthwith be certified to the sheriff and auditor, to be charged to the sheriff and accounted for by him, as other revenue. In such cases the county court may excuse the delinquent from the payment of the fine and triple tax, upon payment of costs of prosecution.

§ 27. The assessor shall make out his tax book in a fair and legible hand, in alphabetical order, and add the amount of valuation of the estate in each column, also the aggregate thereof, and prove its accuracy before he returns the same.

ARTICLE VII.

Board of supervisors of tax.

§ 1. The judge and clerk of the county court, shall, by virtue of their offices, constitute a board of supervisors of tax for each county. They shall convene at the clerk's office of the county on the first Monday in May, in each year, and may continue in session for six days, if necessary.

§ 2. It shall be the duty of said board to examine with care the tax book of each year, to correct any errors of the assessor, whether in fact or in relation to the valuation of

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the estate listed, and, in cases where they shall be of opinion that the estate has been incorrectly valued, to fix the same at its proper value.

§ 3. It shall be the duty of the assessor and his assistants to attend the sessions of said board, and give evidence and information concerning the business before them, upon oath, when required. And the said board shall have power to compel the attendance and examination of witnesses before them, to enable them to discharge their duties.

§ 4. The board, during its sessions, may receive the tax list of any person omitted by the assessor, and enter the same in said tax book. They shall keep a record of their proceedings, and correct the tax book thereby. They shall annex their certificate, that they have examined, corrected, and approved the same, and left it with the clerk for safe keeping.

§ 5. The clerk shall certify to the county court the approval of the tax book, and the county court shall enter the fact upon record. On the presentation of a copy of the order, the auditor shall settle with the assessor, and pay him as is provided in the sixth article.

§ 6. The board of supervisors shall report to the county court the names of persons, liable to taxation, omitted by the assessor in his tax book, by which report the county court shall be governed in their report of the delinquency of the assessor; and the county court shall, also, ascertain the amount of taxable property of all such persons, certify the same to the auditor, and furnish the sheriff with a copy of such additional lists.

§ 7. If the assessor should not return his tax book by the first day of May, the clerk may receive it from him when returned, and proceed to execute the duties required of him, as though returned in time; and shall notify the members of the board of supervisors, who shall convene and perform the duties required of the board. The assessor, for such failure, shall be amerced one hundred dollars.

ARTICLE VIII.

Duties of the circuit and county court clerk in relation to the revenue.

§ 1. The clerk of the county court, after the examination and approval of the tax book, shall make two copies thereof—one for the sheriff, and the other for the auditor of the state. He shall test the accuracy of the extensions and additions of said book, make additions of each column and the aggregate amount, and copy on each page the same amount of matter, and no more, than is upon the original tax book. He shall deliver the copy to the sheriff on or before the first day of June, and take his receipt therefor; which, together with the other copy, he shall transmit, by mail or

otherwise, to the auditor of the state, by the first day of July in each year.

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§ 2. A person improperly charged with any levy or tax, before he has paid the same, may make proof thereof to the court of the county in which the assessment was made, and the court may correct the same. A certificate of the fact by the clerk, if delivered to the sheriff, shall exonerate the person from the payment of so much as may be decided to be a wrongful assessment: which certificate, if produced, shall entitle the sheriff to a credit for the amount, in his official settlement.

§ 3. If taxes have been twice paid upon land under the same title, in the same year, upon proof thereof before the county court, within twelve months after such payment, the county court may order the tax to be refunded to the applicant by the sheriff, if not paid into the treasury; and, if so paid, to be refunded by the treasurer, upon the warrant of the auditor.

§ 4. The county court, before they allow and certify any delinquent list, upon the application of the sheriff, shall administer to the sheriff and his deputies the following oath: "You do swear that this list of insolvents and delinquents, now before the court, and returned by you, is just and true, as you believe, according to the knowledge which you have; and that you will true answer make to all questions asked you touching said lists, and the efforts made by you to collect the amount thereof." The court shall then proceed to examine the sheriff, to ascertain the truth of the facts, and, upon such answers and other evidence, and their own knowledge, to allow such portions of the lists as may be right: which being certified as allowed, shall entitle the sheriff to a credit in his official settlement.

§ 5. Circuit and county court clerks shall make out an account of all moneys they have received up to the first day of each circuit court of their county, and pay over so much thereof to the trustee of the jury fund as the court by order may direct. The amount to be paid shall be certified to the auditor of the state, and credited respectively to the clerks in the settlement of their accounts.

The clerks shall transmit to the auditor an abstract of all judgments rendered in their courts for the benefit of the commonwealth, to be charged to the sheriff and accounted for by him.

§ 6. Clerks of courts, sheriffs, and all other public officers, and their sureties, and the heirs, distributees, devisees, and personal representatives of each, may be proceeded against by suit or motion, jointly or severally, for their liabilities or defalcations, by the commonwealth in her own right.

§ 7. Clerks of circuit courts, at the term next preceding the first day of January, and clerks of county courts, at the October or November term of their county courts, shall

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exhibit to their respective courts a statement, in writing, of all taxes and other public moneys received by them, of whom, for what, and when received, for twelve months next preceding; which shall be verified by them, upon oath, and entered of record, and the original, certified with the order of court, shall be transmitted by them to the auditor of the state. The amount thereof, after deducting five per cent. for commissions, and such other sums as they may have, by order of court, paid over to the trustee of the jury fund, they shall pay into the public treasury, on or before the first day of January in each year.

If any clerk shall fail to perform the duties required of him in this section, he and his sureties shall, upon judgment, pay the full amount of money in his hands, and twenty per cent. damages thereon.

§ 8. The clerk of each county court shall furnish to the clerk of the circuit court, to be laid before the grand jury at each term, a list of the names of all persons to whom he or the county court has issued a license, under this chapter, and for what granted.

§ 9. If, from any cause, the tax book for the year be not returned by the assessor, the clerk of the county court shall copy and deliver to the sheriff the tax book of the previous year, by the first day of June, take his receipt therefor, and transmit the same to the auditor. By this tax book the sheriff and auditor shall be governed in the collection and payment of the tax into the treasury for that year, so far as it exhibits the amount thereof.

§ 10. The clerk of the county court shall file the receipts of the sheriff for all money paid to him for licenses granted, a copy of which he shall transmit to the auditor by the first day of January in each year. The sheriff shall also, by the same day, report to the auditor the amount received by him for licenses. He shall be entitled to a commission of three per cent. upon the amount received by him and paid into the treasury.

§ 11. The county court clerk shall, within one month after the sheriff executes his bond for the collection of revenue, transmit the same to the auditor of state, and retain a copy thereof in his office. A failure to do this shall subject him to a fine of three hundred dollars.

§ 12. The fees of the clerk of the county court for services rendered under the provisions of this chapter, and not elsewhere provided for, shall be as follows:

For copying tax book for sheriff and auditor, for each line across the page of each copy, including the name of the person and the last number of total value, one cent; to be ascertained by the auditor and paid at the treasury.

For issuing a license under this chapter, twenty-five cents, paid in advance.

For taking bond when required, twenty-five cents, to be paid by the applicant, in advance.

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If a tax book returned by the clerk shall contain such errors in the extensions and additions as to make it doubtful as to the true amount of revenue due upon the same, the auditor shall return the book to the clerk for correction. The clerk shall not be paid for said book, but shall be charged by the auditor for the expense of transmitting and returning said book.

ARTICLE IX.

Collection of revenue.

§ 1. The sheriff, by virtue of his office, shall be collector of the revenue. If he fail or refuse to execute bond, with surety, as required by law for the collection of the revenue, he shall forfeit his office. If, after he gives the bond, he fail to pay into the treasury, by the time prescribed by law, the whole revenue due to the commonwealth and collected by him, he shall also forfeit his office. A quietus by the auditor, for the revenue tax of the preceding year, shall be produced by each sheriff, to the county court, at the January, February, or March term.

§ 2. When the sheriff fails to give bond for the collection of the revenue, the county court shall appoint a collector of revenue for that year, and take bond, with good surety, for the faithful execution of the duties required by law. Such collector shall be governed by the laws regulating the duties of sheriffs in the collection of revenue; and he and his sureties, their executors, administrators, devisees, and heirs, shall be jointly and severally liable to the commonwealth, and all others, in the same manner that the sheriff and his sureties would have been.

§ 3. The sheriff shall enter into bond, with surety, for the collection of the revenue and public dues, at the January or February term of the county court in each year. The county court shall judge of the sufficiency of the surety; and in no case shall surety be taken who are not jointly worth, after the payment of all their debts and liabilities, a sum equal to the aggregate amount of revenue to be collected for the year. The commonwealth shall also have a lien, from the date of said bond, upon the real estate and slaves of the sheriff, then owned or afterwards acquired by him, which shall not be discharged until the sheriff obtains his quietus for all the revenue and public dues he is bound for.

§ 4. The bond of the sheriff, for the collection of the revenue and all other public dues, shall be in substance as follows:

"We, A. B., the sheriff of county, Kentucky, and C. D. and E. F., his sureties, bind and oblige ourselves, jointly and severally, to the commonwealth of Kentucky,

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that the said A. B., sheriff of county, shall, by himself or deputies, during the present year, collect, account for, and pay into the treasury of the state, and to other persons entitled thereto, according to law, all taxes and public dues; also, all fines, amercements, and penalties directed or authorized by law to be collected or received by him, in the year, within the county of

“Witness our signatures, this day of .”

The obligors in said bond, their devisees, heirs, executors, or administrators, may be made liable, by suit or motion, jointly or severally, for a breach of the same, until the whole amount of the sheriff's liability shall be discharged.

§ 5. The sheriff, from and after the first day of June, in each year, shall collect the taxes due in his county, and, upon failure, by the persons bound therefor, to pay the same, may distrain the slaves, goods, and chattels, owned by, or in the rightful possession of, the persons from whom tax is due, notwithstanding the existence of any lien upon the same; and may proceed to sell the title of such person in so much thereof as will pay the tax due, and all costs, in the mode prescribed by law. He may retain the amount of tax, county levies, and other public dues against individuals, out of any claims allowed by the commonwealth or the county court to such individuals, notwithstanding any assignment of the same.

§ 6. The sheriff shall account for and pay all taxes and other public moneys for which he is bound, into the treasury, by the fifteenth day of January, in each year. Upon failure to do so, he and his sureties shall be liable therefor, and compelled to pay the amount of tax due, and six per cent. interest on the same from the first day of June preceding till paid, and costs of suit, beside the damages imposed in the third section of the twelfth article.

§ 7. A sheriff shall deposit, at any time before the fifteenth day of January, if authorized and required to do so in writing by the auditor of state, the whole or any part of the revenue collected by him, in any bank within the state of Kentucky, and within one hundred miles of the residence of the sheriff, to be named by the auditor, to the credit of the treasury, taking three receipts of the cashier of said bank, stating the amount deposited, and when, and by whom. One of these shall be forwarded to the treasurer, and one to the auditor of state. The amount thereof shall be credited to the sheriff in his settlement with the auditor.

§ 8. The sheriff shall pay over to the trustee of the jury fund, out of any public money in his hands, the amount he may be required to pay by the order of the circuit court of his county, to meet any deficiency in said fund. He shall take duplicate receipts for the same, one of which he shall forthwith transmit to the auditor, and, upon the settlement

of his accounts at the treasury, shall be credited with the amount so paid.

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§ 9. Sheriffs shall be allowed, by the auditor, the following commission upon the sums collected and accounted for, or paid into the treasury, in each year:

Upon the first thousand dollars eight per cent., on the second thousand six per cent., on the third thousand five per cent., on the fourth thousand four per cent., and all above four thousand three per cent.

§ 10. The sheriff, before he makes distress for taxes, shall tender the person from whom the tax is due, if resident in the county, a receipt, in which he shall specify the taxable estate with which such person is charged, the value and amount thereof, and the tax due. If he shall distrain before the tender of such list and receipt, he shall forfeit and pay to the person aggrieved double the amount of such tax, and such damages as he may sustain, to be recovered by suit in his own name.

§ 11. The sheriff shall, after having advertised, at the court house, the time and place of sale for at least ten days, sell at public auction, for money, so much of the estate distrained for taxes as will pay the tax and costs. If the sheriff make illegal or unreasonable seizure and distress for taxes, he shall be liable in damages to the party aggrieved.

§ 12. If there be no personal estate which the sheriff can distrain for tax on real estate, and the owner of the land or town lot shall fail to pay the same, fifty per cent. shall be added to the amount of tax for the first year, and one hundred per cent. for the amount due for the second year. The sheriff, at the same time he returns his insolvent list, shall report to the auditor, verified by his oath in open court, a list of all such lands and town lots, the name and residence, when known, of the persons bound for the tax, the county or town where situated, and such other description of the same as he may be able to give, and the amount of the tax due thereon; and where two years of tax shall be due, the auditor shall certify the fact to the sheriff of the county where the land is situated. The said sheriff shall advertise the said list for at least one month, at the door of the court house; and if the tax and costs be not paid, he shall, at the first term of his county court, publicly proclaim said list, and the amount of tax due on each tract, and forfeit the same: which shall vest in the commonwealth all the title the delinquent had in said lands and town lots. Lands and town lots, so forfeited, may be redeemed by the owner, or any person for him, within two years, by paying into the treasury the amount of said tax and costs, and one hundred per cent., per annum, interest on the whole amount.

§ 13. If any person bound for tax shall be insolvent, or shall have removed out of the county with his estate, after

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he was assessed for tax, and before a sufficient time to collect it had elapsed, the sheriff shall, at the court of claims of his county, make out two lists—one of insolvents, the other of removals, stating therein the amount of tax due from each individual, the property assessed, and the county or place to which they may have removed—the facts stated in each list shall be verified on oath—which lists the county court shall carefully examine, and strike therefrom such as they may know, or have evidence to believe, are not insolvent, or who have not removed, or whose tax could have been collected before removal, by reasonable diligence on the part of the sheriff. The list, certified by the clerk, if produced to the auditor before suit or motion is commenced against the sheriff, shall entitle the sheriff to a credit for the amount; and the auditor shall transmit the lists of delinquents, with the amount of the tax due, to the sheriff of the proper county, for collection, who shall collect and account for the same as other revenue.

§ 14. The sheriff shall, upon payment of money into the treasury, take the receipt of the treasurer and file it with the auditor, who shall credit him thereby; and when the whole revenue and public dues collected by the sheriff shall have been accounted for or paid, the auditor shall give to said sheriff a receipt in full. All money paid into the treasury shall be charged on account, by the auditor, to the treasurer.

§ 15. Sheriffs shall have the same power, for twelve months after the expiration of their term of office, to collect any arrearages of revenue which fell due during their official term, and for which they are and were responsible, as they had before the expiration of their term of office.

§ 16. If a sheriff die or resign, or is removed from office, his successor shall proceed to collect any arrearages of tax or public dues, and shall account for the same, as other public revenue collected or to be collected by a sheriff.

§ 17. Suits and motions against sheriffs and their sureties, public debtors, and all others required to pay money into the treasury, or do any other act required by law to be done connected with the payment of money into the treasury after it has been collected, or the giving the auditor information upon the subject of the collection and payment of the revenue into the state treasury, may be instituted in the general court and prosecuted as prescribed by law.

ARTICLE X.

Payment of revenue by banks and other corporations into the treasury.

§ 1. The cashier of a bank and the treasurer of any other institution whose stock is taxed, shall, on the first day of July in each year, pay into the treasury the amount of

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tax due. If such tax be not paid, the cashier and his sureties shall be liable for the same and twenty per cent. upon the amount, and the said bank or corporation shall thereby forfeit the privileges of its charter.

§ 2. Railroad, bridge, and turnpike companies in which the state is a stockholder, shall each settle and state the affairs of the company on the first day of January and July in each year, and exhibit the gross amount of tolls and items of expenditure, the specific amounts for repairs and other expenses, and debts due to, and the outstanding debts due by the company, to whom due and the amount thereof. A copy of this statement shall, within ten days thereafter, together with a copy of the bond of the treasurer of the company, be transmitted to the auditor of the state. They shall also make a dividend of the profits, if any, at least once in each year, and pay to the stockholders and to the treasury of the state the amount due to each, on or before the tenth day of January, in every year.

§ 3. If any railroad, bridge, or turnpike company shall fail or refuse to perform the duties enjoined in the preceding section, the president, directors, or managers thereof shall be fined not less than one hundred dollars each, and made personally liable therefor.

§ 4. If the commonwealth's portion of the dividend be not paid as required in the second section of this article, the president, directors, or managers, and the treasurer and his sureties, in office for the time, and their heirs and personal representatives, jointly or severally, shall be fined the sum of five hundred dollars, and made liable for the amount due to the commonwealth, and to be proceeded against as defaulting sheriffs.

ARTICLE XL

Tax on the lands of non-residents.

§ 1. The lands of non-resident proprietors shall be listed with the auditor of public accounts for taxation, in a book to be kept by him for that purpose. If not so entered, they shall be thereby forfeited, and the title vested in the commonwealth.

§ 2. The auditor may administer an oath to the persons entering lands with him for taxation, and require from such person a description of each tract of land, its situation and probable value, and from his statement, or such other evidence as he can obtain, assess the value of said land, including all improvements thereon, without reference to the validity of title; which valuation shall stand for three years, when a new estimate of value shall be made.

§ 3. Non-residents who shall think themselves aggrieved by the valuation of their lands, may apply to the county court of the county in which the seat of government is situated, and upon evidence given of the true value of said

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land, without regard to the validity of the title, have the valuation corrected by producing to the auditor a copy of the order of said court.

§ 4. Taxes due for lands of non-resident proprietors shall be paid into the treasury of the state, on or before the tenth day of February in each year. If not paid, fifty per cent. shall be added to the amount for the first failure; for the second year, the tax shall be double; and if not paid for three consecutive years, the tax shall also be increased one hundred per cent. for the third year. The auditor shall advertise the same for three months succeeding the end of the third year, in the newspaper of the public printer, twice in each month, stating the amount of tax and cost due on each tract; and if the amount of tax be not paid before the end of three months, the title shall thereby vest in the commonwealth, and the auditor shall make the appropriate entry upon his books.

The land so forfeited for non-payment of the tax, &c., due as above, may be redeemed by the owner, or any other person for him, within one year after such forfeiture and investment of title, by the payment of the amount of tax for which it was forfeited, and interest on the same, at the rate of one hundred per cent. per annum.

§ 5. If the auditor fail to perform any of the duties required of him by this article, he shall be fined two hundred dollars for each offense.

ARTICLE XII.

Proceedings against sheriffs, and others, to compel the payment of revenue into the treasury.

§ 1. If any sheriff, clerk, or other person authorized to collect or receive the public money, revenue or tax, shall fail to account for or pay into the treasury, as required by law, the auditor shall proceed, in the name of the commonwealth, by motion or suit, without notice to the parties, to collect the same, by judgment and execution against such sheriff, clerk, or other person, and their sureties, and their heirs, distributees, devisees, and personal representatives, jointly and severally, at the next or any subsequent term succeeding such defalcation.

§ 2. The motions or suits, in the preceding section mentioned, shall be docketed for trial on the third day of the term. The auditor shall file with the clerk of the court a memorandum, in writing, of the names of the parties, the amount due from each defaulter against whom judgment is demanded, and also a copy of the official bond, if any. The clerk shall docket said motions or suits in the order in which the names stand on said memorandum.

§ 3. Judgments, when given against the defendants, in the cases referred to in the two preceding sections, shall

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be for the principal due, with its legal interest, and the twenty per cent. damages on the amount of the principal.

§ 4. If any of the defendants shall, upon oath, deny the execution of the bond, or instrument, whereby they are sought to be made liable, a jury of by-standers shall be impaneled to try the facts. All other facts may be tried by the court. Nothing but a quietus, or receipt, from the auditor of the state, of the fact of payment of the taxes or money claimed, shall be admitted on the trial. No tender of payment, nor any offset, shall be pleaded or given in evidence.

§ 5. If any sheriff, or other person bound for the collection of public revenue or other public dues, shall obtain indulgence or further day to pay the same into the treasury, by any act of the legislature, such indulgence or delay shall not discharge the sureties from any liability unto which they would be subject, if such delay had not been granted; and in all such cases, if the party indulged shall fail to pay the money by the day fixed in the statute, the auditor shall, on the third day of the next, or any succeeding term, proceed against such defaulter and his surety, as though no such indulgence had been given.

§ 6. Judgments, in the name of the commonwealth, against sheriffs and other public collectors, their sureties, or the heirs, devisees, or personal representative of any of them, shall bind the estate, legal and equitable, of all the defendants to said judgments, from the commencement of suit till satisfied. No execution thereon shall be staid by replevin or sale on credit, but, in all such cases, the estate taken in execution shall be sold for money.

§ 7. If any officer shall make a false return on such execution, he shall be fined twenty dollars, upon notice and motion, and subjected to the payment of the whole amount of said execution, and costs.

§ 8. Officers, and their deputies, failing to levy executions in the name of the commonwealth, or withholding any such executions, and not making return thereof for one month after the return day, or failing to pay the money when collected, shall, together with their sureties, be liable, on motion, for the amount of said executions, and thirty per cent. damages thereon.

§ 9. When executions in the name of the commonwealth have been levied upon estate, but the same remains unsold, or the demand unsatisfied, and the time of the officer who levied the execution has expired, any new execution or final process may, at the discretion of the attorney general, be issued to the officer by name who made the levy. If the execution was levied by a deputy, he shall, in that case, as well as all others, give the name of his principal. Every failure so to do, shall subject his principal to a penalty of fifty dollars.

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§ 10. When the estate of the defendant in execution, upon judgment against defaulting public officers, may be encumbered by a previous *bona fide* mortgage, deed of trust, or other incumbrance or prior lien, whereby the officer cannot legally levy the same, he shall make return of all the facts known to him, or of which he is informed, giving the date and consideration of such deed, to whom made, when recorded, the evidences of any prior lien, and the names of the parties who claim the same. The attorney general may institute proceedings against the parties, to have their claims and demands, if just, satisfied, and all incumbrances removed, and the proceeds of the sale of the estate rightfully applied.

§ 11. If any person shall attempt to stop or injure the sale of the estate under execution, of any public debtor, by any fraudulent execution, conveyance, or incumbrance, he shall forfeit and pay three hundred dollars.

§ 12. If return be made on executions against sheriffs and their sureties, or other public defaulters, that there was no sale, for want of bidders, the auditor may direct the estate levied upon to be removed from county to county, for sale, as often as may be necessary. The costs of removal to be paid out of the sale of the estate, as other costs; and the officer who levied the execution shall have power to sell the same in any county to which the estate may be removed. If real estate be levied on, the place of sale may be changed to another county; and the officer shall have the same power and authority to sell and convey said estate, which he had in the county where the levy was made.

§ 13. If, in settlements with the auditor, a mistake has been committed, the same may be corrected, by application to the general court, within two years. Notice of such application, specifying the error or mistake, shall be served upon the auditor, or upon the public debtor, as the case may be.

§ 14. The general court, as well as the circuit court, shall have jurisdiction of all suits, in law or equity, necessary to be instituted by the auditor to enable him to collect the public revenue, and other demands or penalties due the commonwealth, or to have satisfaction made of judgments, in the name of the commonwealth. The auditor may employ agents and additional counsel to aid in the preparation and prosecution of all suits instituted to enforce the payment of judgments and demands against public debtors, and, by written contract, stipulate with them for a reasonable compensation, or make said compensation conditional—not exceeding twenty per cent. on the first three hundred dollars, and ten per cent. on the remainder. The attorney general is not to receive any compensation in such cases, beyond his salary and legal fee. When the services

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have been rendered, the amount agreed upon shall be paid to the agents or additional counsel out of the public treasury, upon the warrant of the auditor. When the money is collected, if the fee is conditional, it shall be paid out of the same. Neither the attorney general, nor any attorney of the commonwealth, nor counsel employed by the auditor, shall receive the money due and owing to the commonwealth from any public debtor, sheriff, or other officer.

§ 15. Upon a judgment, in the name or for the use of the commonwealth, a *capias pro fine*, or any other final process, may issue, from time to time, until the judgment be satisfied.

§ 16. Upon the return of "no property found" on an execution, or on a *capias* that the person is not taken, or, if taken, that the debt is not paid, a proceeding in chancery, in the name of the commonwealth, may be instituted, and the choses in action, or other equitable estate of the defendant, collected and subjected to the payment of the amount of the judgment, and costs of suit.

CHAPTER XV.

SLAVES, RUNAWAYS, FREE NEGROES, AND EMANCIPATION.

ARTICLE I.

Who shall be deemed slaves.

§1. No persons shall be slaves in this state, except such as are now slaves by the laws of this commonwealth, or some other state or territory of the United States, or such free negroes as may hereafter be sold into slavery under the laws of this state, and the future descendants of such female slaves.

§ 2. Every person who has one-fourth, or other larger part of negro blood, shall be deemed a mulatto, and the word negro, when used in any statute, shall be construed to mean mulatto as well as negro.

§ 3. Slaves, after this chapter takes effect, shall be deemed and held to be personal estate. They shall be distributed in kind, without sale, when practicable.

Held to be personal estate.

§ 4. Slaves shall not be sold by the personal representative, unless, for the want of other assets, it be necessary to pay the debts of the decedent. Nor shall slaves, specifically devised, be sold by the personal representative or a creditor, but by a decree of court, which may be obtained in a summary way, on petition, after ten days' notice, in writing, to the devisee. Suits may be maintained by the personal representative, for the recovery of slaves, or injuries to slaves devised.

When they may be sold.

§ 5. Slaves may be taken and sold for debt, when there is not a sufficiency of other personal estate within the jurisdiction of the officer.

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Free negroes
incapable of
owning a slave.

§ 6. No free negro shall be capable of acquiring, in fee, or holding or owning for any length of time, as hirer, or otherwise, any slave, other than the husband, wife, parent, or descendant of such free negro.

§ 7. No gift of a slave shall pass the title, or be good against creditors or purchasers, unless it be made by will, duly proved and recorded, or by deed, in writing, acknowledged by the donor before the clerk of the county of his residence, or attested by two witnesses, and proved by one of them before such clerk, and lodged for record, except where the possession of the slave, at the time of the gift, be in fact delivered to the donee, and in good faith continued with him; nor shall such gift, when evidenced by deed recorded, affect the rights of a pre-existing creditor of the donor, until the donee shall, in good faith, have had three years' continued possession of said slave.

The owner of
slaves for life to
file names, &c.

§ 8. Every owner of a slave, for his own or another's life, and the guardian or husband of such owner, shall, on the first day of January, or within sixty days thereafter, within each year, file with the clerk of the county in which he resides a statement, in writing, of the names, sex, and ages of such slaves, which shall be recorded at the cost of the person in remainder, in a book to be kept for that purpose. If the owner, guardian or husband fail to file such annual statement, he shall be fined not exceeding fifty dollars for each offense, for the use of the person in remainder, to be recovered by suit or indictment, at the cost of the person suing. Sheriffs and assessors of tax shall report to the clerk of the circuit court the names of all persons, within their knowledge, who have failed to comply with the provisions of this statute.

Persons hold-
ing a life estate
in slaves not to
remove them
out of the state.

§ 9. If any widow, or other person, holding a life estate in a slave, or the vendee, immediate or remote, of such tenant for life, shall remove, or permit the slave to be removed out of this state, without the consent, in writing, of the person in remainder or reversion, or his guardian, if he be under age, such life estate shall be forfeited and cease, and the person in reversion or remainder may recover the slave, or he may recover of the person removing, or consenting to the removal, its value, with such other damages, besides the hire, as a jury may assess, not exceeding one half the value of the slave removed. A court of chancery may, for good cause shown, compel the tenant or owner of a life estate in a slave to give bond, with good surety, for the forthcoming of the slave at the termination of the same, and, upon a failure to give the bond, make such order and decree as may be equitable.

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ARTICLE II.

Of the importation of slaves.

§ 1. Slaves imported from a foreign country since the first day of January, 1808, or which may hereafter be imported from such country, or slaves who have been tried and convicted of felony in any other state or territory, shall not be imported into this state. Any person knowingly violating this section, shall be fined three hundred dollars for each slave so imported.

§ 2. No slave shall be imported into this state as merchandise, or for the purpose of sale or barter, in or out of this state, under the penalty of six hundred dollars for each slave so imported.

Penalty for
importing slave
for merchandise

§ 3. Immigrants to this state, intending to reside here, may bring with them, and citizens residing within this state may purchase and import into this state for their own use, such slaves as are not prohibited by the first section of this article.

Immigrants
may bring slaves

§ 4. Immigrants bringing with them their slaves, as permitted in the next preceding section, shall, within sixty days after their arrival, take the following oath before a justice of the peace of the county of their residence: "I do swear, that my removal to the state of Kentucky, was with the intention of becoming a citizen thereof; that I have brought with me no slave with the intention of selling him:" which oath, certified by the justice, shall be recorded in the office of the county court, within sixty days. The two preceding sections shall not apply to travelers or sojourners in this state.

To take an oath.

§ 5. Persons resident within this state, deriving title by gift, will, descent, distribution, or by marriage, to slaves, may import them, if they be not such as are prohibited by the first section of this article.

Who may im-
port slaves.

§ 6. A citizen importing slaves under the provisions of this article, shall, within forty days after such importation, present to the clerk of the county court of his residence a true and correct list of such slaves, with their names, ages, and sex, verified by his oath. He shall also, before the clerk, take the following oath: "I do swear that I have purchased, or received, and imported into the state of Kentucky, the slaves named in the list this day made out by me, and filed with the clerk of county, for my own private use; that they were not purchased, or received, and imported for sale, or speculation, or to be treated as merchandise; and that I do not believe any one of them has been imported into the United States since the first of January, one thousand eight hundred and eight; or that any one of them has been convicted of felony in any other state or territory." The list, and oath affixed, shall be recorded by the clerk, in a book to be kept for that purpose. The fee to the clerk shall be fifty cents for each slave.

List of slaves
imported to be
filed with the
clerk.

Oath.

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Penalty for
selling a slave
within 5 years
after such im-
portation.

§ 7. If any citizen shall import into this state, under the provisions of this article, a slave, and shall sell said slave before the expiration of five years after such importation, or shall hire out such slave for a term of more than one year, or shall use any device whatever, whereby to evade the provisions of this article, he shall be fined the sum of six hundred dollars, to be recovered by indictment or suit in the name of the commonwealth; one-half to the use of the prosecutor or relator, and if there be neither, then, the whole to the use of the commonwealth.

Penalty for
buying a slave
imported con-
trary to law.

§ 8. If any person shall buy a slave, knowing that he has been imported into this state contrary to the provisions of this article, or if he shall buy a slave imported by a resident citizen, under the provisions of the third section of this article, within eighteen months after such importation, knowing the same, he shall be fined, for each slave, the sum of two hundred dollars, to be recovered as in the last section named.

When slaves
imported may
be sold under
execution.

§ 9. Slaves imported by citizens, under the provisions of the third section of this article, shall not be subject to sale, or be sold under execution, or other legal procedure for the payment of debts, unless all other estate of the debtor, subject to the payment of debts, shall be first exhausted, until after the expiration of eighteen months from such importation. If the defendant shall suffer or permit such slave to be sold, when he has other estate, he and the sheriff who makes the sale, knowingly in contravention of this section, shall each be fined two hundred dollars for every slave so sold.

§ 10. A person taking an oath under the provisions of this article, knowing the same to be false, shall be guilty of perjury.

When proce-
dures may be
commenced.

§ 11. Indictments, for importing slaves contrary to the provisions of this article, may be found upon the personal knowledge of any one of the grand jury, or upon the oath of a credible witness. All suits or prosecutions, for a violation of the provisions of this article, shall be commenced within five years after the offense committed or cause of action shall have accrued, and not after.

ARTICLE III.

Of dealing with slaves, and suffering them to go at large.

§ 1. If the owner or hirer of a slave shall license him to go at large and trade as a freeman, or shall permit him to go at large and hire himself out for his own benefit, or that of another, he shall be fined forty dollars for each offense, to be recovered by a presentment of a grand jury, or suit in the circuit court.

§ 2. Any person may, and officers shall, with or without warrant, arrest any slave as to whom there is a violation

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of the preceding section, and upon proof of the fact, by order of a justice of the peace, the slave shall be committed to jail, unless his master, or some person for him, enter into recognizance, with good surety, for the forthcoming of the slave at the next term of the circuit court, to abide the order of said court. If the owner be found guilty, upon indictment, of having violated any of the provisions of said section, and fail forthwith to pay the fine and costs, the slave shall be sold therefor, in the same manner as slaves are sold under execution.

§ 3. If any person shall receive from, deal or trade with, a slave, for money or other thing, without the consent, in writing, of his owner, designating the article, commodity, or thing, in which such slave is permitted to deal or trade, shall forfeit and pay to the owner ten dollars, and four times the value of the commodity so bought or sold, to be recovered by a suit before a justice of the peace, when the sum claimed is under sixteen dollars, and when it exceeds that amount, by presentment of a grand jury in the circuit court.

Penalty for dealing with a slave.

A slave offering to deal or trade with a free person, without such permit, shall be punished by order of a justice of the peace with a number of stripes not exceeding ten.

§ 4. If any person shall sell, give, or loan spirituous liquor, of any description, to the slave of another, unless for the time being he shall have the rightful custody and care of such slave, without the written order of the owner, he shall be fined fifty dollars for each offense.

For selling liquor to a slave.

§ 5. If any master, or other person, give written permission to a slave to obtain, or furnish him with intoxicating liquor, with intent he shall barter, or sell, or trade the same, or any part thereof, such master, or other person, shall forfeit twenty dollars, and give surety for his good behaviour for twelve months. If the offender against either of the two preceding sections shall be a tavern keeper, or person licensed to retail spirituous liquors, his license shall be annulled by the judgment of the court; nor shall such license be granted him for two years thereafter.

§ 6. If any person having the control of a house or plantation, shall, knowingly, permit or suffer any slave not his own to remain in such house, or upon such plantation, for the space of four hours, without the leave of the owner of such slave, he shall forfeit and pay ten dollars for every such offense. If such person shall permit more than five negroes or slaves, not his own, at one time, to remain in his house, or on his plantation, he shall forfeit one dollar for each negro; which fines and forfeitures may be recovered to the use of any person suing for the same, before a justice of the peace, or by the presentment of a grand jury.

Penalty for permitting slaves to remain on the premises of another.

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§ 7. The preceding section shall not apply to negroes owned by the same person, seated and located at different plantations, meeting by the consent of their owner or overseer, nor to negroes meeting at any public mill in the day time on the business of their owners, nor on the Sabbath day, nor to meetings on any other lawful occasion by the permission of their owner, nor to negroes attending upon divine service.

Penalty against
a free negro for
harboring slaves

§ 8. If any free person shall be found in company with slaves or negroes, at any unlawful meeting, or shall harbor any slave, without the consent of the owner, he shall forfeit and pay fifteen dollars for each offense. If a slave harbor the slave of another person, he shall, upon conviction by the judgment of a justice of the peace, be punished by stripes, not exceeding twenty.

Riots, &c.,
how punished.

§ 9. Riots, routs, unlawful assemblies, breaches of the peace, and seditious speeches by slaves, shall be punished with a number of stripes not exceeding thirty-nine, upon conviction by the judgment of a justice of the peace.

If a slave shall go from the residence of his owner without a written permit, specifying the place to which such slave is licensed to go, and the time of absence, he may be apprehended, taken before a justice of the peace, and punished by stripes, not exceeding thirty-nine, at the expense of the owner.

Penalty against
a slave or free
negro for as-
saulting a white
person.

§ 10. If any slave shall assault a free white person, by his hand or by any other means, he shall, upon conviction before a justice of the peace, be punished with stripes, not exceeding thirty. If a free negro so assault a free white person, he shall, upon conviction by indictment, be fined, not more than one hundred dollars, and imprisoned not more than three months.

§ 11. If any slave, without leave, in writing, from his owner, shall come upon the premises of a free white person, not being sent on lawful business, the owner of such premises, or the manager of the same, may punish such slave, for each offense, by the infliction of ten stripes.

Penalty for
keeping or car-
rying a gun.

§ 12. If any negro shall keep or carry a gun, or other deadly weapon, powder, or shot, the same may be seized by any free white person; and upon due proof thereof, before a justice of the peace, it shall be forfeited, and vested in the person seizing; and if the negro offending be a slave, he shall, by a judgment of a justice of the peace, be punished by stripes, not exceeding thirty-nine; if a free negro, fined five dollars.

ARTICLE IV.

Of insane, aged, and infirm slaves, and the abuse of them.

§ 1. If the owner of an infirm, insane, or aged slave, or any person having such slave under his control, suffers him to go at large, or fails to make adequate provision for his

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support, he shall be punished by fine not exceeding fifty dollars; and the county court, or other public authorities, charged with the supervision and care of the poor, or any city, town, or county, in which such slave may be found, shall provide for his maintenance, may charge such person, quarterly or annually, with a sum sufficient therefor, and recover it, from time to time, by a motion, in the name of the commonwealth, in the county court. If any person shall, by gift, sale, or otherwise, dispose of any insane, aged, or infirm slave, which is, or is likely to become, chargeable to the county, vendee, or donee, such person, at the election of the county court, or other public authorities, may be proceeded against as the owner of the slave, under this section.

§ 2. If the owner of any slave shall treat him cruelly and inhumanly, so as, in the opinion of a jury, to endanger the life or limb of such slave, or materially to affect his health, or shall not supply his slave with sufficient wholesome food and raiment, such slave shall be taken and sold for the benefit of the owner.

Cruel treatment
to a slave.

§ 3. On the petition of any person, verified by oath, or upon the presentment of a grand jury, setting forth, substantially, the ill treatment of the slave, the court shall cause the owner of the slave to be summoned, and may, if it shall appear proper, direct the sheriff or other officer to take possession of the slave, and hire him out, pending the proceeding; and such judgment and orders shall be given by the court as the finding of the jury shall justify.

§ 4. If the hirer of a slave for a term of time shall treat him in the manner described in the second section, or shall fail to furnish such slave with food and raiment, the owner of the slave may proceed against him, by petition, in the manner prescribed in the third section, and, upon the facts, or any of them, being found against the defendant, the court shall rescind the contract of hiring, upon equitable principles, and restore the slave to his owner.

§ 5. A suit may be maintained by the owner of a slave, though not in his actual possession, against any person who shall unlawfully whip, strike, or abuse such slave, and recover damages for such act, notwithstanding the said slave, by such whipping, striking, or abuse, may not have been rendered incapable of labor.

ARTICLE V.

Of the abduction and stealing of slaves, removing them out of the state, by boatmen and others, and exciting them to rebellion.

§ 1. If any free person not having lawful, or, in good faith, a color of claim thereto, shall steal, or shall seduce or entice a slave to leave his owner or possessor; or if he shall make, or furnish, or aid, or advise in the making or furnishing a forged or false pass, or deed of emancipation,

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or other writing purporting to liberate a slave; or if, in any manner, he aid or assist a slave to make his escape, or to attempt to make his escape from such owner or possessor, he shall be confined in the penitentiary for a period of not less than two, nor more than twenty years.

Penalty against
a free person.

§ 2. A free person convicted of an attempt to persuade or entice away a slave, from the service of his master, or owner, or the person in possession of the slave; or if convicted of the attempt to persuade or induce, by any means, a slave to run away from his master, or owner, or person in possession of him, shall be confined in the penitentiary for a period not less than two years, nor more than five years.

A free person
suspected, how
to be dealt with.

§ 3. A free person suspected of an attempt to entice or take a slave from his owner or lawful possessor, upon complaint, on oath, to a judge of the circuit or county court, shall be apprehended, and brought before the officer issuing the warrant, or some other of equal jurisdiction in the county where the offense is charged to have been committed; and upon such attempt being proved to the satisfaction of the judge, he shall recognize such offender, with one or more good sureties, to be of good behavior during his stay or residence in this state, or for such other time as the judge shall think proper. If the accused shall fail to give such bond, or a bond with sufficient surety, that he will forthwith quit the commonwealth, and not again return, he shall be committed to the jail of the county, there to be kept until the next term of the circuit court, at which time he may, for sufficient cause, be discharged from confinement, with or without bail, as the court may adjudge.

An attempt to
excite an insur-
rection, how
punished.

§ 4. If any person shall be convicted of the offense of attempting to excite a slave to insurrection, he shall be confined in the penitentiary for not less than five, nor more than twenty years.

Penalty against
concealing a
stolen slave.

§ 5. If any free person shall be convicted of the offense of knowingly concealing a stolen slave, or a slave enticed from the service of his master or owner, or of harboring a runaway slave, with the intention to prevent the owner from obtaining possession of such runaway, he shall be confined in the penitentiary for not less than two, nor more than twenty years.

Penalty against
conveying away
a slave.

§ 6. If the owner, his driver, agent, or servant, of any mail stage, railroad car, or any other conveyance for the transportation of persons or property, suffer or permit a slave to go as passenger thereon, with or without pay, without the written request of his master or owner, unless accompanied by the master or owner, the person so offending shall be fined one hundred dollars, and shall, also, be answerable to the master or owner for all damages he may sustain thereby.

ARTICLE VI.

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Of runaway slaves.

§ 1. Every slave arrested as a runaway shall be taken before a justice of the peace, and, if there be reasonable cause to suspect that such slave is a runaway, the justice shall give a certificate of the fact, stating therein the county in which the slave was arrested, the name, if known, and description of the negro, the name and residence, if known, of his master, and the name and residence of the person who apprehended the runaway, and the amount due the apprehender, and, by his precept indorsed thereon, command him to deliver the slave to the jailer of his county, or, if the owner is resident in the county of the justice, to deliver the slave to the owner thereof.

§ 2. If the slave be delivered to the jailer for safe keeping, the person apprehending him shall leave with the jailer the certificate of the justice, described in the first section, take the jailer's receipt for the negro, and the jailer shall keep said slave in a close jail until demanded by the owner, or his agent, and shall not deliver him then, until the fee or reward offered for taking up, expenses of keeping, jailer's fees, and costs, are paid to him. If he deliver the slave, without the payment of the fee or reward for taking up, or if the same be paid him, he and his surety shall be liable to the person taking up said slave, for the same. The jailer shall not be liable for a private reward, if he deliver the slave, not knowing that such reward had been offered by the master.

§ 3. The compensation for apprehending a runaway slave, where no larger amount has been offered as a reward, shall be as follows, to be paid by the owner: If the slave be arrested in the county of the residence of his master, or the person who had the legal custody of him when he ran away, and delivered to the master, or the person from whom he escaped, or lodged in the jail of the county, ten dollars; when in any other county, twenty dollars. If the slave be arrested in a state where slavery is not allowed, and delivered to the owner at his residence in this state, one hundred dollars; if lodged in the jail of any county in this state, whether the master or owner reside in or out of this state, seventy-five dollars.

Compensation
for apprehend-
ing.

§ 4. When a runaway slave shall be committed to jail, under the provisions of this chapter, the jailer shall, within ten days thereafter, advertise said runaway, in a newspaper nearest his residence, in which he shall give an accurate description of the slave, which advertisement shall be continued for six months, if the slave be not sooner claimed by his master. If said slave be not claimed within six months, the fact shall be reported by the jailer to the county court. The court shall cause the slave to be valued by

Runaways to
be advertised.

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two persons, and direct him to be sold; also, the time and place of sale, and the smallest sum for which the slave shall be sold.

To be sold in
certain cases.

§ 5. The sheriff shall sell the slave at the court house, upon a court day, to the highest bidder, after having advertised in a newspaper nearest his residence, for at least two months, the time and place of sale. The sheriff shall give, in said advertisement, a description of the slave. The slave shall be sold upon a credit of six months, with interest, the purchaser to give bond and good surety, to the commonwealth, to have the force and effect of a replevin bond. The bond shall be returned to the clerk's office of the county, and if not paid to the clerk when due, execution shall issue upon the same. The clerk, and sheriff, and their sureties, shall respectively account for, and pay over, any money so received or collected by them, in the same manner as they account for public revenue.

Proceeds of
sale, how dis-
posed of.

§ 6. The sheriff, or clerk, shall pay over, by order of court, to the jailer and clerk, the fees and costs due them, and to the person taking up, the fee or reward allowed. The sheriff shall be paid the costs of advertising the sale, and five per cent. for making the sale. The remainder of the sum for which the slave sold shall be paid into the public treasury, for the use of the owner of such slave, to be paid to such owner when demanded, without interest.

§ 7. The treasurer shall pay the amount so deposited, to the owner of the slave, upon the production of the judgment of the county court, by whose order the slave was sold, that the person claiming the same had, by legal and disinterested evidence satisfied the said court that he was, at the time of the sale, the owner and master of said slave. A payment so made, shall forever exonerate this commonwealth from all claims or liability for the amount, to any other person.

§ 8. When an imprisoned runaway is not sufficiently clothed, the jailer shall furnish him with proper negro clothing, to be paid by the master or owner, as his other jail fees.

ARTICLE VII.

Of felonies committed by slaves and free negroes.

For burning a
court house, &c.

§ 1. If a free negro or slave willfully and unlawfully burn a court house, county or public prison, a clerk's office of a court, the capitol of the commonwealth, or any building upon the capitol square, the office of a county surveyor, a public office belonging to the commonwealth, or to any county, city, town, or corporation, or a tobacco house, warehouse, stable in which horses are kept, or a stable in a town, a still house, or a house or place where wheat, rye, Indian corn, hay, or any other commodity is usually kept, or a mill, or a factory, or any shed attached to and appur-

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tenant to a manufacturing establishment, or a house of public worship; or if he shall aid, abet, assist, counsel, hire, or command any person to commit any of said offenses, such free negro or slave, being thereof convicted, shall suffer death; or, if the offender be a slave, he may be punished by any number of stripes not exceeding two hundred, to be inflicted at different times, not more than fifty at a time; and a free negro may be confined in the penitentiary for a period not less than two nor more than ten years.

§ 2. If any slave or free negro shall conspire to rebel or make insurrection, he shall be guilty of felony, and, upon conviction, shall suffer death.

Insurrection.

§ 3. If any free negro or slave shall administer to any person poison, or other destructive thing, with the intention to destroy life, upon conviction, he shall suffer death.

Administering poison.

§ 4. If any free negro or slave be guilty of murder, rape committed upon a white woman of any age, or the attempt to commit such rape, or be accessory before the fact to either of the aforesaid crimes, upon conviction, he shall suffer death.

Murder or rape.

§ 5. If a free negro or slave be guilty of arson, robbery, or of voluntary manslaughter, or of homicide, perpetrated in the commission, or the attempt to commit, any felony, upon conviction thereof, he shall suffer death; or, if the offender be a slave, he may be punished by a number of stripes not exceeding two hundred, to be inflicted at different times, not more than fifty at a time; and if he be a free negro, he may be confined in the penitentiary for a period not less than two, nor more than ten years.

Arson, robbery, &c.

§ 6. If a free negro or slave consult about the murder or advise the murder of any person, he shall, on conviction in a circuit court, be punished by any number of stripes not exceeding one hundred.

§ 7. If any free negro or slave shall willfully and maliciously shoot at any free white person, with a gun or other instrument, with intent to kill such person, or shall willfully and maliciously wound a free white person, with intent to kill such person, or to kill any other, upon conviction, he shall suffer death, or the punishment by stripes or confinement in the penitentiary, mentioned in the fifth section.

For shooting at a free white person.

§ 8. If any free negro or slave unlawfully and maliciously blow up, or attempt to blow up with gunpowder, or to burn, or by any act to destroy the locks of the Louisville and Portland canal, or the bridge of said canal, the locks or dams of the state upon any of the rivers thereof, or a public bridge over any water course, upon conviction thereof, he shall suffer death.

Blowing up locks of Louisville & Portland canal.

§ 9. If a free negro shall deliver to a slave the original free papers, or a copy thereof, of himself or of any other person, or if he write, or deliver to a slave a written pass, to go from one place to another, or a written authority for

For delivering a pass.

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any purpose, in his name, or in the name of the owner, hirer, or other person, known or unknown, he shall be guilty of felony, and upon conviction, he shall be confined in the penitentiary for not less than one, nor more than five years.

For larceny.

§ 10. If a slave commit a larceny, he shall be punished with stripes, not exceeding thirty-nine. If a free negro commit larceny of any kind, he shall be punished in the manner, and to the same extent as though he were a white person.

Telegraph..

§ 11. That if a slave molest or injure any line of electromagnetic telegraph, its posts, piers, or the materials belonging thereto, he shall, by order of a justice of the peace, be punished by not more than thirty-nine stripes.

§ 12. If a slave commit any misdemeanor, not specified in this chapter, he shall be punished with stripes. If a free negro commit any misdemeanor, not specified in this chapter, he shall be punished as though he were a white person.

§ 13. In all cases when the punishment for offenses prescribed in this chapter is stripes, if the number be not specified for the particular offense, the number shall not exceed thirty-nine, and to be inflicted upon the bare back of the offender; and all crimes or offenses, committed by a free negro, or slave, which are punishable by stripes, are declared to be, as to them, misdemeanors.

Charge to a
slave on a trial.

§ 14. Upon all trials, when a negro is to be sworn as a witness, the judge, or justice presiding, shall give to such negro the following charge: "You are brought hither as a witness, and by law, it is my duty to tell you, before you give your evidence, that you must tell the truth, the whole truth, and nothing but the truth; and that if it be ascertained that you tell a lie, and give false testimony in this matter, you must, for so doing, (if a slave,) receive thirty-nine stripes upon your bare back." If the witness be a free negro, "that he will, upon conviction of the offense, be confined in the penitentiary."

False swearing.

§ 15. If the judge, or court, before whom a slave is called to testify, shall be satisfied that he has given false evidence, knowingly and wilfully, he shall, after the trial is closed, cause the punishment imposed by the preceding section to be inflicted.

§ 16. If a free negro shall, in any trial in which he shall give evidence, or in any oath required by law to be administered to him, and when administered by a person authorized, commit perjury, he shall be guilty of felony, and punished as though he were a white person.

Trial for a capital offense.

§ 17. The final trial of a slave, for offenses punished with death, shall be had in the circuit court of the county in which the offense was committed; and he shall be tried by a jury, in the same mode and manner as free persons are tried.

§ 18. The master or owner of any slave may, on the trial of his slave for crimes or misdemeanors, defend him.

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§ 19. When any slave shall be charged with felony, the master or owner may bail such slave in those cases in which free persons are bailable, according to the laws regulating bail in criminal cases.

§ 20. It shall be the duty of the master or owner, personal representative, or guardian of such owner, to employ counsel to defend a slave, when tried in the circuit court. If no counsel be employed, the court shall assign counsel to defend him. The master or owner, or his personal representative, or the guardian, shall pay said counsel the sum awarded him by order of the court, for such defense, not exceeding fifty nor less than twenty dollars, and may be attached and compelled to pay the same.

Counsel to be employed to defend.

§ 21. No free negro or slave shall be exempt from the punishment prescribed by law, by reason of any benefit of clergy.

§ 22. When judgment of death shall be passed upon a free negro or slave, there shall be thirty days, at least, between the time of passing such judgment and the day of execution, except in cases of conspiracy, insurrection, or rebellion.

§ 23. Upon the trial of a free negro or slave, the court may receive, as evidence, his confessions, if freely and voluntarily made, the weight of which shall be judged of by the jury.

Confessions of a free negro or slave to be received as evidence.

§ 24. When the court shall sentence to death a slave, the value of such slave shall be fixed by the court, and entered on record. If the slave be executed, or die in jail, after conviction, before the day of execution, the value, so fixed, shall be paid out of the public treasury to the master or owner, upon a presentation of a copy of the record, and certificate of the sheriff of the fact of the death or execution of such slave. If a slave, imported into this state contrary to law, or passing through this state, by land or water, to any other state, territory, or country, be executed for crime, or die before execution, he shall not be paid for as above.

Slaves executed.

§ 25. In all cases of a conviction of a negro for any offense, except that of murder, insurrection, rebellion, or rape, or the attempt to commit the offense of rape upon a white person, if the punishment imposed be death, the governor of the commonwealth shall have power to commute such punishment to a confinement in the penitentiary for life; and, if such convict be a slave, the owner shall be paid for him as though he were executed, or take the proceeds of his labor in the penitentiary, at his election, to be made in open court at the term succeeding the mandate of commutation of punishment.

Commutation of punishment.

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ARTICLE VIII.

Of misdemeanors by free negroes.

§ 1. If any free negro shall keep a disorderly house, or shall be found loitering about, engaged in no honest calling to obtain a support, he shall be guilty of a misdemeanor.

Police judge
to summon the
offender.

§ 2. The police judge of any city or town, where the offense is committed in a city or town, judge of a county court, or justice of the peace, shall issue a summons against the offender, described in the preceding section, stating therein, substantially, the nature of the offense; which summons may be executed and returned by a constable or other officer, before the police judge, or the judge of a county court; and when executed, the constable, or other officer, shall give a copy of the same, and state also in said copy the time and place of trial, giving said defendant at least two days between the service and the day of trial, to prepare his defense.

§ 3. The police judge of a city or town, or a judge of a county court, shall have jurisdiction to hear and try offenders, denounced in the first section of this article, within their respective jurisdictions. A jury shall be impaneled to try the facts.

To be hired out
if found guilty.

§ 4. If the defendant be found guilty, he shall be taken immediately into custody, and hired out as a servant, at public auction, to the highest bidder, for a term not exceeding six months; bond and good surety shall be given by the person hiring, for the payment of the amount to the commonwealth, and also that he will provide good wholesome diet, lodging, and clothing for said person of color, during said time, and that he will not remove the said free negro out of the state, or permit it to be done.

Proceeds of
hire, how dis-
posed of.

§ 5. The amount, when collected, after the payment of all costs, shall be applied, under the order of the officer who tried the offender, first to the payment of his debts, next to the support of his family, if free; if no such family, then to be paid into the city treasury, or to the use of the county, as the case may be.

Giving liquor
to a slave.

§ 6. If a free negro sell or give ardent spirits to a slave, without the consent of the owner, he shall be deemed guilty of a misdemeanor.

Not to man-
ufacture liquors.

§ 7. If a free negro shall engage in the manufacture of whisky, brandy, or other spirituous liquors, except as the hired servant of a free white person; or if he shall sell to any person, in any quantity, whisky, brandy, or other spirituous liquor, he shall, upon indictment and conviction, be fined in a sum not less than fifty, nor more than three hundred dollars, and stand committed until the fine and costs be paid; one-half of the fine, when collected, to the use of the commonwealth's attorney.

§ 8. It shall be the duty of the justices of the peace, when they have reason to believe, upon complaint made to them, that any free negro has violated the provisions of the two preceding sections, to issue a warrant for his apprehension, returnable before a justice of the peace. The officer to whom such warrant is directed shall arrest the defendant, and immediately bring him to trial. If, upon trial, the justice shall believe defendant guilty, the negro shall give bail for his appearance at the next term of the circuit court of the county, in a reasonable amount; if such bail be not given, the accused shall stand committed for trial.

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Warrants to be issued by justices.

ARTICLE IX.

Emancipation of slaves.

§ 1. Slaves may be emancipated by the owners in fee thereof, in the following manner, and upon the following conditions, and not otherwise :

Terms and conditions.

1. By deed, acknowledged or proved by two subscribing witnesses, in the county court.
2. By last will and testament.
3. Subject to the debts and liabilities of the owner.
4. Upon condition of their being removed from, and continued residence out of, the state of Kentucky.
5. The deed of emancipation, and so much of any will as emancipates a slave, shall not vest the absolute right of freedom in the slave, until after he shall have removed out of the state.

§ 2. No slave shall be emancipated who is over sixty-five years of age, or who is, by disease or infirmity, incapable of labor for a support, unless the owner provides the means for his transportation out of this state, and one year's support.

What kind may be emancipated.

§ 3. When the person emancipating a slave, by deed or will, shall fail to provide for his removal out of the state, the county court shall, by order, direct the slave to be hired out from year to year, until a sufficient fund shall be created thereby to defray the expenses of moving said slave to some place out of this state, and to maintain him for twelve months.

Failure of emancipator to remove slave out of the state.

§ 4. The county court shall appoint trustees, who shall not be members of said court, from time to time, in their respective counties, for such slaves as may be emancipated under the provisions of this article. They shall take from the trustees bond, with good surety, for the faithful discharge of their duties, and shall cause them to report and settle their accounts once in each year, and pay over the funds in their hands, which shall be preserved by the county court, or placed at interest, from time to time, until the same shall be required for the purposes named in the third section of this article.

Trustees to be appointed.

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§ 5. The trustee, appointed under the provisions of the preceding section, shall have the right to control the slave placed under his care, and shall possess all the rights, powers, and privileges, and be subject to all the responsibilities, of the master of said slave, so long as he may be continued as trustee.

§ 6. When the county court shall be of opinion that a sufficient fund has been created by the labor of the slave, or otherwise provided for him, to remove and support him, as required by the third section of this article, the court shall ascertain, by personal examination of the slave in open court, his willingness to be removed out of the state, and to accept his freedom upon the conditions prescribed by law, and in the tenth article of the constitution of Kentucky; and if the consent of said slave be given, the fact shall be entered on record, with the age, and particular description of the said negro, a copy of which, with the deed, or will of emancipation, under the seal of the court, shall be delivered to said negro, and such other orders made by the county court as may be deemed necessary to effect the safe and certain removal of the slave out of this state, for permanent residence.

§ 7. If a family of negroes shall be emancipated, the proceeds of the labor of all shall be united in one common fund, and applied for the removal of all at the same time, and to the same place.

§ 8. The county court shall have power, for good cause, to remove a trustee or agent, appointed by them under the provisions of this article, and to appoint another in his place.

§ 9. The issue of a slave emancipated by deed, born after the date of the deed, shall have the same right to his freedom that the mother has under said deed, and shall be treated accordingly.

Issue of a slave
willed to be free

§ 10. The issue of a slave willed to be free, born after the death of the testator, shall have the same right to freedom as the mother, and be treated accordingly, unless it shall manifestly appear by the provisions of the will that such issue is not intended to be emancipated.

§ 11. The county court, out of the funds produced by the labor of the slave, shall allow to the trustee a reasonable compensation for his trouble, and shall pay the costs incurred in court from time to time.

§ 12. When the master, or owner, provides a fund for the removal of the slave, and fails to prescribe the time and manner of removal, the county court shall take charge of the fund and slaves, and proceed as directed in the sixth section of this article.

Slaves eman-
cipated refusing
to be removed.

§ 13. All slaves emancipated, who shall refuse to give their assent to be removed out of the state, as required, shall be hired out thereafter under the provisions of this article, for the benefit of the county, in such mode as the

county court may direct, until such time as they shall give their assent, and actually remove out of the state.

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ARTICLE X.

Slaves emancipated subject to the payment of debts.

§ 1. Slaves emancipated shall be equitable assets in the hands of the personal representative of the testator, for the payment of debts. If emancipated by deed, a creditor or person who may be bound as surety for the owner, may, by proper procedure in chancery, prevent their removal out of the state, until his debt is paid or his liability removed.

§ 2. Before the county court shall order an emancipated slave into the possession of a trustee, under the provisions of the ninth article of this chapter, the personal representative shall be summoned, and if it appear that there is not a sufficiency of other estate to pay the debts and liabilities of the decedent, no such order shall be made without the consent of the personal representative, unless the creditors assent to be paid their demands out of the fund to be created by the hire of the slaves. If such assent be given, the court shall make the order, and apply the fund ratably, as it may accrue.

§ 3. If no such consent be given, then the creditors, by proceeding in equity against the personal representative, heirs, devisees, and distributees, and the slave, shall have satisfaction of their debts in the following manner:

1. The slave shall be hired out pending the suit.
2. No sale of the slave shall be made until it shall appear that all other estate of the testator is insufficient for the payment of his debts and liabilities.
3. An absolute sale shall not be decreed by the chancellor, if a sale or hire for a term of years shall be sufficient to pay the debts.
4. After applying the whole of the estate of the decedent to the payment of his debts, then the fund created by the hire of the slave, if any remain, shall be paid over to the county court, for the benefit of the slave, to be used as provided for in the ninth article of this chapter; and the slave shall then be placed under the control of the county court, to be disposed of as therein provided.

§ 4. A slave emancipated by will, may, by bill in equity, compel the personal representative, heirs, devisees, distributees, and creditors, to settle the estate, and establish his right to emancipation.

§ 5. Pending a suit contesting the validity of any deed or will of emancipation, the slave may be required to give surety not to leave the commonwealth, or otherwise restrained from so doing, until such contest be finally decided. And if hired out, the hire, pending the suit, shall, if

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the slave be entitled to his freedom, be disposed of as is directed in the ninth article of this chapter.

ARTICLE XI.

Free negroes immigrating to this state.

§ 1. Any free negro or mulatto who has, since the eleventh day of June, 1850, migrated, or who shall hereafter migrate to this state, with the intention of remaining therein, shall be guilty of felony, and, upon conviction, shall be confined in the penitentiary for any period of time not exceeding five years.

§ 2. If any slave, hereafter emancipated by the laws of this state, shall fail or refuse to leave the state, as required by law, after having elected to do, so as provided in the sixth section of the ninth article, or having left the state, shall return and settle within the same, he shall be deemed guilty of felony, and, upon conviction, confined in the penitentiary for any period of time not exceeding five years.

§ 3. Persons guilty of offenses denounced in either of the preceding sections, shall be apprehended and tried as is provided for in other cases of felony.

§ 4. Persons convicted of either of the offenses in the preceding sections, after they have served the time of confinement in the penitentiary, or after they may have been pardoned, who fail to leave, but remain in this state for a period of thirty days, shall be guilty of felony, and punished by confinement in the penitentiary for a period not less than five nor more than ten years, for each offense.

§ 5. If any free negro or mulatto, not a resident of Kentucky, shall come into this state, he shall repair to the county court clerk of the county in which he shall first come, and there make his business known to the clerk; and the clerk may, if he is satisfied said free negro's business is laudable and lawful, issue a certificate to said free negro, setting out the object of the visit, and authorize such free negro or mulatto to remain and transact said business, not exceeding thirty days, for which he may charge fifty cents, to be paid by the applicant. If any such free negro or mulatto shall fail or refuse to procure said certificate within twenty-four hours after he comes into this state, or shall continue longer in the state than allowed by said certificate, he or she shall be apprehended and taken before some justice of the peace, there to be tried; and if found guilty may be confined in the county jail where apprehended till he or she shall give good security to leave the state forthwith; and also pay all costs of the proceeding.

CHAPTER XVI.

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PATROLS.

ARTICLE I.

Appointment and duties.

§ 1. County courts shall, once in each year, divide their respective counties into as many districts as the public peace and good order of society may require, and appoint, in each district, a company of patrols, to consist of one captain, and not exceeding three men, to continue in service twelve months, unless removed by the county court for neglect of duty or improper conduct. None but discreet and sober men shall be appointed patrols; they shall take an oath, before a justice of the peace, faithfully, impartially, and diligently to perform the duties of patrols. But patrols shall have jurisdiction co-extensive with the whole county.

§ 2. The county court shall prescribe the number of hours, in each month, the said company shall be on duty, in their bounds.

§ 3. Patrols shall visit negro quarters, and all suspected places, and places of unlawful assemblies of slaves, within their respective precincts.

§ 4. A slave found at unlawful assemblies, or strolling from one plantation to another, or found in a town or city without a written pass for the time, from his master or overseer, or person having the control of him; or who shall sell, or offer to sell, any commodity, or have the same in his possession for sale, without the written authority of his master, or person controlling him, specifying the article to be sold, shall be punished by, and at the discretion of, the captain of the patrol, by any number of stripes not exceeding ten; or he may be taken, by the patrol, before a justice of the peace, and may, by the order of the justice, be punished by stripes, not exceeding thirty-nine.

§ 5. Patrols shall each be paid by order of the county court, out of the county levy, a sum not exceeding one dollar for each ten hours they may have been purposely engaged in the performance of their duties. At the court of claims for the county, patrols shall present their claims for services, specifying the number of hours each has been engaged, and verified by the oath of the patrol, upon which the court shall fix the amount to be paid.

ARTICLE II.

Special patrol companies.

§ 1. The county courts, for counties bounded by the Ohio river, if they think proper, may, at any time, appoint for their respective counties a strong and active patrol, to consist of sober, discreet citizens, not to exceed thirty in any county, whose duty it shall be to guard and watch the

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places for crossing the river, and such other points and places as may be designated by the court; to notice the condition and situation of all water craft upon the Kentucky shore of the Ohio river; to report to the proper authority all delinquencies and violation of laws, by those having charge of, or right to keep such water craft. Said patrol may also exercise the powers prescribed to patrols in the first article of this chapter. They shall have power to arrest, without warrant, any person found lurking about, with intention to afford assistance, by advice or otherwise, to any slave to escape from his master, or who may be lurking about for any harmful purpose to the community.

§ 2. Any free person arrested under the authority of the first section of this article, shall be taken before a justice of the peace, and if such person be not of good fame and behavior, or if believed by the justice of the peace to be guilty of the offense described in said section, he shall give bail, in a reasonable sum, to appear at the next circuit court for said county, and answer to the charge of evil fame or evil behavior, or the charge of violating the provisions of said first section. The circuit court shall have power to demand further bail of such person, and may, if believed to be guilty of any offense punishable by law, cause him to be prosecuted for the same. If the person fail or refuse to give the bail required by the justice or the court, he shall be committed and dealt with as other offenders failing to give bail.

§ 3. The patrol, appointed under this article, shall continue in service twelve months, unless sooner discharged by the county court. Any member of the patrol may be dismissed by the county court, and another appointed in his place. The county court shall appoint the captain and four lieutenants for each company of patrols. The officers and men, before entering upon their duties, shall take an oath, faithfully, diligently, and impartially to discharge their duty, as special patrols.

§ 4. All orders touching the duties of said patrol, issued by the captain, or given by him or a lieutenant in person, shall be obeyed by the officers and men; and a willful refusal to obey or execute them, shall be punished by fine, not exceeding five dollars, to be recovered by warrant before a justice of the peace.

§ 5. The county court may require of the patrols, appointed under this article, jointly or severally, to give bond and surety for the faithful discharge of their duties, which may be put in suit by any person aggrieved or damaged by their acts as such.

§ 6. For every fugitive slave apprehended by said patrol, or any member thereof, in the county of the residence of his master or owner, and delivered, or lodged in jail, so that the master or owner gets the slave, there shall be paid

twenty-five dollars; if apprehended in any other county, fifty dollars, to be paid by the owner of said slave.

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§ 7. The county court may limit, by an order, the number of hours in each month, in which the patrol shall be on duty, or leave the same to the sound discretion of the captain. The officers and men shall each be paid out of the fund created for that purpose, a sum not exceeding one dollar and fifty cents for every twelve hours purposely engaged in the discharge of their duties.

§ 8. The county court shall, from time to time, create a fund to pay the expenses of said patrol, by a poll tax on each slave in the county, not exceeding one dollar on each black tithable; which fund shall not be expended or used by the county court for any other purpose.

CHAPTER XVII.

FUGITIVES FROM JUSTICE.

ARTICLE I.

§ 1. Upon the demand of the executive of any state or territory of the United States, made upon the governor of this commonwealth, to surrender a fugitive from justice from said state or territory, pursuant to the constitution and laws of the United States, he shall issue his warrant to the sheriff or constable of any county within this state, commanding him to apprehend said fugitive and bring him before some circuit judge.

§ 2. The circuit judge shall proceed, by the examination of witnesses, to ascertain if the person apprehended be the fugitive demanded and mentioned in the warrant of the governor of this state, and, if satisfied of the identity of the person, the judge shall order him to be delivered up to the agent of the state or territory demanding him, to be transported to such state or territory agreeably to the laws of the United States; otherwise he shall discharge the person from custody.

§ 3. If no such agent be present, the fugitive shall be committed to the jail of the county in which the hearing before the judge is had. Of the fact of commitment the judge shall forthwith inform the governor of this state, and, on demand by the agent of the state upon the jailer, by the authority of the governor of this state, the fugitive from justice shall be delivered up to such agent. If said fugitive be not demanded within three months after his commitment, the jailer shall discharge him.

§ 4. All costs incurred in apprehending and securing said fugitive, shall be paid by the agent of the state, before he shall be permitted to remove him or receive him into custody.

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§ 5. If a person shall be charged, by indictment or otherwise, in any state or territory, of the offense of kidnapping, or of removing, by force or otherwise, a person of color from said state, and shall be demanded by the executive of such state or territory of the governor of this state, as a fugitive from justice, and the person shall be apprehended and brought before a circuit judge, as is provided for in the first section of this article, it shall be the duty of the judge not only to inquire into the identity of the person of such supposed fugitive, but he shall also inquire into the fact whether he is the owner of the negro charged to have been abducted, or whether he acted as the agent, friend, or by the permission of the owner, or had his sanction for what he did in the premises; and, if he is satisfied the person arrested was the owner, or acted as his agent, friend, or with his sanction and approbation, the judge shall discharge him; if not so satisfied, the judge shall deal with him as required by the provisions of this chapter.

LAW OF THE UNITED STATES.

An act respecting fugitives from justice, and persons escaping from the service of their masters. Approved February 12, 1793.

§ 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That whenever the executive authority of any state in the Union, or of either of the territories north-west or south of the river Ohio, shall demand any person as a fugitive from justice, of the executive authority of any such state or territory to which such person shall have fled, and shall, moreover, produce the copy of an indictment found, or an affidavit made before a magistrate of any state or territory as aforesaid, charging the person, so demanded, with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the state or territory from whence the person so charged fled, it shall be the duty of the executive authority of the state or territory to which such person shall have fled, to cause him or her to be arrested and secured, and notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority, appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent, when he shall appear; but if no such agent shall appear within six months from the time of the arrest, the prisoner may be discharged. And all costs or expenses incurred in the apprehending, securing, and transmitting such fugitive to the state or territory making such demand, shall be paid by such state or territory.

§ 2. *And be it further enacted,* That any agent, appointed as aforesaid, who shall receive the fugitive into his custody, shall be empowered to transport him or her to the state or territory from which he or she shall have fled. And if any person or persons shall, by force, set at liberty or rescue the

fugitive from such agent, while transporting as aforesaid, the person or persons, so offending, shall, on conviction, be fined not exceeding five hundred dollars, and be imprisoned not exceeding one year.

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ARTICLE II.

Arrest of persons for offenses committed in another state or territory.

§ 1. A person guilty of felony any where in the United States, if found in this state, may be arrested and confined in jail, and delivered over to the proper authority, in the following manner:

1. A warrant issued by any judicial authority, upon affidavit made of the facts, shall authorize his arrest by any ministerial officer, or other person, to whom it may be directed by name.

2. The person arresting the accused shall immediately take him before the circuit judge, the president judge of the county court, or the police judge of a city, in the county in which he was arrested, who shall, upon hearing the evidence, if satisfied of the guilt of the prisoner, commit him to the jail of the county where he was arrested, there to remain sixty days, unless he be legally discharged, or removed upon the demand of the executive of the state or territory in which it is charged that the offense was committed.

§ 2. It shall be the duty of the person who caused the arrest of such fugitive to be made, to notify the executive of the state in which the crime was committed.

§ 3. The governor of this commonwealth, upon a proper demand made, shall issue his warrant directing the officer having the custody of the prisoner to deliver him to the agent of the state demanding him, whose duty it shall be to deliver over such prisoner, upon the payment of all legal costs and charges by said agent, or other person.

CHAPTER XVIII.

HABEAS CORPUS.

§ 1. The writ of *habeas corpus* shall be issued, upon proper application, by the following officers:

1. By a judge of a circuit court, or of any chancery court, during the sitting of the respective courts, or in vacation.

2. Where there is no judge of the circuit or chancery court at the time in the county, then by a police judge of any city or town, or judge of the county court, or in their absence from the county, by a justice of the peace.

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The power of a judge of a circuit court or chancery court to issue writs of *habeas corpus*, shall be co-extensive with the state; that of the county, city or town officers shall extend only to the limits of their respective towns, cities or counties.

§ 2. Writs of *habeas corpus* may be granted without the seal of the officer, but shall be signed by him.

§ 3. The writ of *habeas corpus* shall be granted forthwith, by any of the officers enumerated in the first section of this article, to any person who shall apply for the same by petition, showing, by affidavit or other evidence, probable cause to believe he is detained without lawful authority, or is imprisoned when, by law, he is entitled to bail.

§ 4. The writ shall be directed to the person in whose custody the prisoner is detained, and made returnable, as soon as may be, before the circuit or chancery judge of the county in which it may be served, if either be within the county, or, in his absence, before a judge of the county court, or, in his absence from the county, before two justices of the peace. The writ shall specify the time and place to which it shall be returned.

§ 5. The officer granting the writ may previously require bond, with surety, in sufficient penalty, payable to the commonwealth, or to the person against whom the writ is directed, conditioned that the person detained shall not escape by the way, and for the payment of such costs and charges as may be awarded against him. The bond shall be filed with the other proceedings in the court, and may be sued on by the commonwealth, for the benefit of any person injured by the breach of it.

§ 6. The writ shall be served by any qualified officer, or by any private individual designated by the judge, on the person to whom it is directed, or, in his absence from the place where the petitioner is confined, on the person having him in immediate custody.

§ 7. The writ shall be made returnable within three days after it is served, or, if the person is to be brought more than twenty miles, within so many days more as will be equal to one day for every twenty miles for such further distance, and shall be returned with the person of the petitioner, with the cause of his detention, or his imprisonment, stated in said return. The officer, or other person serving the writ, shall leave a copy with the person on whom it is served, upon which the cause of detention shall be stated, and return the original to the proper officer.

§ 8. If any person, on whom such writ is served, fail to bring the body of the petitioner, with a return of the cause of his detention, at the time and place specified in said writ, he shall forfeit and pay the prisoner one thousand dollars. When the person who applies for a writ of *habeas corpus* shall not be in the custody of a jailer, or other officer,

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the judge may, for good cause shown, direct the officer or person serving the writ to take the applicant into his custody, and produce him on the return of the writ.

§ 9. When a person is confined in jail by warrant of commitment, or order of a court of record, the officer, upon demand of the prisoner, or any one for him, shall deliver a copy of the same; and if he refuse, he shall forfeit and pay to the prisoner three hundred dollars.

§ 10. If any officer enumerated in the first section of this article, shall, when legally applied to, refuse to issue the writ of *habeas corpus* to the petitioner, he shall forfeit and pay to the petitioner five hundred dollars.

§ 11. The officer before whom the writ is returned, after hearing the matter, both upon the return and any other evidence, shall either discharge or remand the petitioner, or admit him to bail, or make such order as may be proper, and adjudge the costs of the proceeding, including the charge for transporting the prisoner, to be paid as shall seem right; which payment may be enforced, by attachment, or otherwise, by the court to which the proceedings are returned.

§ 12. At the discretion of the officer or court before whom the writ is returned, the affidavits of witnesses, taken by either party, on reasonable notice to his agent or attorney, may be read as evidence on the trial of the return.

§ 13. The proceedings upon a writ of *habeas corpus* shall be returned to the clerk of the circuit court of the county in which the writ was heard, or to the court in which the prosecution, if any, is pending.

§ 14. The officer issuing the writ in vacation, or the officer before whom it may be returned for trial, shall have the same power to compel the attendance of witnesses, or to punish a contempt of his authority, as a court of record has; and his judgment on the trial of the writ shall be considered, and be enforced as if it were a judgment of such court.

§ 15. A person delivered upon a writ of *habeas corpus* shall not again be imprisoned, or committed for the same offense, except by the legal order or process of the court wherein he shall be bound by recognizance to appear, or some other court having jurisdiction of the same cause.

§ 16. Upon the trial of a *habeas corpus*, if the judge, or other officer, shall be of opinion that the prisoner has been guilty of a misdemeanor, or felony, for which such prisoner may be liable to be tried, and that the proceedings against him are so defective that he cannot be detained by them, the judge, or other officer, shall admit him to bail, if he be entitled to bail, to appear at the court having jurisdiction over the case, or remand him to the custody of the proper officer, to be conveyed to the proper county for new proceedings, to be had against such prisoner.

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§ 17. Writs of *habeas corpus* shall issue upon the application of the husband, father, mother, guardian, or next friend of any married woman or infant, detained by any religious or other association, or by persons acting under the authority of such association. The county attorney, where such detention is made, shall prosecute such writ, without fee, if required to do so.

§ 18. A person committed to prison in custody of an officer, for any criminal offense, shall not be removed from said prison, or delivered to the custody of any other officer, except in the following cases:

1. By writ of *habeas corpus*, or some other legal writ.
2. When he may be delivered to an officer, to be removed to some common jail.
3. In case of fire, infectious disease, or other great necessity.

4. When the prisoner is charged, by affidavit, with treason or felony, committed in some other state or territory of the United States of America; in which case he shall, on the demand of the executive of such state, or the governor of a territory in the United States, from which he fled, be sent thither in custody, by the order of any circuit court, or judge thereof; or may be bound by recognizance, with good surety, by said court or judge, to appear at the proper time and place, and surrender himself to the court or tribunal having jurisdiction of the offense, if the said court or judge shall, upon consideration of the evidence, be of opinion he should be put upon his trial.

CHAPTER XIX.

LANDLORD AND TENANT.

ARTICLE I.

What shall not
work a forfeiture.

§ 1. A conveyance made by a tenant for life or years, purporting to grant a greater estate than he has, shall not work a forfeiture of his estate, but shall pass to the grantee all the estate which such tenant could lawfully convey.

Restriction on
tenants.

§ 2. No tenant for a term not exceeding two years, or at will, or by sufferance, shall assign or transfer his term or interest, or any part thereof, to another without the written assent of the landlord.

§ 3. If any tenant shall violate the provisions of the preceding section, the landlord, after giving ten days notice to quit possession, shall have a right to re-enter the premises and take possession thereof, or to oust the tenant, sub-tenant, or under-tenant by the proper procedure.

How a tenancy
from year to
year may be terminated.

§ 4. Either party may terminate a tenancy from year to year, by giving notice, in writing, of his intention to terminate the same, of not less than three months before the end

of the year if for lands in a city or town, and six months if elsewhere.

§ 5. A tenancy at will or by sufferance may be terminated by the landlord giving one month's notice, in writing, to the tenant, requiring him to remove.

§ 6. If a tenant, after giving notice of his intention to quit possession of the premises held by him, shall not accordingly deliver possession thereof at the time specified in the notice, such tenant, or his representatives, shall, from thenceforward, pay to the landlord, his heirs or assignees, so long as he continues in possession, double the rent which he should otherwise have paid, to be recovered in the same manner as the single rent.

§ 7. The preceding section shall apply to a tenant whose term is to end at a certain time, or to a tenant who enters under a special agreement that no notice is to be given, and who shall refuse to deliver possession, in the first instance, when his term expires, and, in the second, when possession shall be demanded.

§ 8. No notice to quit shall be necessary, from or to a tenant whose term is to end at a certain time, or when, by special agreement, notice is dispensed with.

ARTICLE II.

§ 1. Rent reserved in money may be recovered by distress, and rent reserved in money or otherwise may be recovered by action.

§ 2. Where the contract is not by deed, a landlord may recover, by action, a reasonable satisfaction for the use and occupation of lands; on the trial of which, if any contract not in writing, whereby a certain rent was reserved, shall be proved, the plaintiff shall not, for that, be non-suited; but the same may be used as evidence of the criterion of recovery.

§ 3. Rent, after it is due, shall carry interest like other liabilities originating in contract.

§ 4. A landlord shall not issue his own distress warrant; but when the rent is reserved in money, may, before a justice of the peace, or a judge of a county court, or a police judge of a town, in the county where the land lies, by himself or agent, make oath to the amount of rent due him and in arrear, and thereupon such officer may issue a distress warrant, directed to the sheriff, or a constable of the county, authorizing such officer to distrain the personal estate of the tenant, for the amount due, with interest and costs; the personal estate of a sub-tenant found on the premises, shall also be liable to the distress. But if the tenant has removed his property to another county, the distress may be directed to such county.

§ 5. When any person who shall be liable to pay rent, (whether the same be due or not, and whether the same be payable in money or other thing, if the rent be due within

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Tenancy at will, how terminated.

Tenants liable for double rent in certain cases.

Notice.

Rent, how recovered.

To carry interest

Distress warrant, how issued

Attachment for rent.

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one year thereafter,) intends to remove, or is removing, or has, within fifteen days, removed his property from the leased premises, the person to whom the rent is owing may, before a justice of the peace or a judge of a county court of the county in which the tenement lies, state, on oath, the facts aforesaid, and that he believes, unless an attachment be issued, he will lose his rent; whereupon such officer shall issue an attachment for the rent against the personal property of the person liable for the same, to any county the person suing out the same may desire. But no such attachment shall issue until the plaintiff has given bond, with good surety, to indemnify the defendant, if it appear that the attachment has been wrongfully obtained.

§ 6. All attachments issued under this chapter, for a sum of fifty dollars or less, exclusive of interest and costs, shall be returned before a justice of the peace; and all those for a sum exceeding fifty dollars, shall be returned before the circuit court of the county whence it issued; and in either case, the proceedings thereon shall be the same as on other common law attachments.

Who may have
distress. &c.

§ 7. He to whom rent is due, whether he have the reversion or not, or his personal representative or assignee, may recover it, as provided in the three preceding sections, whatever be the estate of the person owing it, or though his estate or interest in the land be ended.

§ 8. If the owner or holder alien or assign his estate or term, or the rent thereafter to fall due thereon, his alienee or assignee may recover such rent.

Who liable for
rent.

§ 9. Rent may be recovered from the lessee, or other person owing it, or his assignee or under-tenant, or the representative of either, by the same remedies given in the preceding sections.

§ 10. But no assignee or under-tenant shall be liable for rent which became due before his interest began. The liability of heirs or devisees, for the debts and rents of the ancestor or devisor, shall not, by any thing herein, be changed or impaired.

§ 11. Whether the lease be ended or not, rent may be distrained for within six months from the time it has or may become due, and not afterwards.

§ 12. A distress or attachment for rent, may be levied on, and shall bind any personal estate of the lessee, or his assignee or under-tenant, found on the premises, or which may have been removed within fifteen days.

Prior liens.

§ 13. If the personal estate of such lessee, assignee, or under-tenant, when carried upon the premises, shall be subject to a valid lien against his creditors, his interest only in such estate shall be liable to the distress or attachment.

On what a
landlord has a
lien, &c.

§ 14. A landlord shall not have an exclusive lien, under his warrant, except on the produce of the farm, or premi-

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bes rented, on the fixtures, and on the household furniture of the tenant or under-tenant, and on such other of his personal estate as is not acquired after he takes possession of the premises. Nor shall such lien be for more than one year's rent, due or to become due, nor for any rent which has been due for more than four months.

§ 15. If any *bona fide* lien be created on the personal estate, whilst on the leased premises, the same shall be liable to distress or attachment, but not for more than one year's rent, whether it shall have accrued before or shall accrue after the creation of such lien.

§ 16. The distress or attachment may be also levied on any personal estate of the lessee, or his assignee, claiming or occupying the leased premises, directly or indirectly, under the tenant, either in or out of the county in which the leased premises shall lie. But the landlord's lien shall not extend beyond fifteen days after the removal of the property, nor against a *bona fide* purchaser.

§ 17. Property exempted from execution shall be also exempted from distress or attachment for rent.

What property exempt from distress.

§ 18. Any person guilty of a pound breach, or rescous of property distrained for rent, shall be liable to the person aggrieved for treble damages, with costs of suit. If the property distrained, after such breach or rescous, come to the possession of the owner by his wrongful procurement, he shall be liable to the person aggrieved in like manner.

§ 19. If, after the commencement of any tenancy, a lien be created on the property liable for rent upon the leased premises, the party making or acquiring such lien may remove the property from the premises upon the following terms, and not otherwise: that is, by paying to the person entitled to the rent so much as is in arrear, and securing to him so much as is to become due; what is so paid and secured not being more altogether than a year's rent, in any case.

Property on leased premises, how removed by purchasers.

§ 20. If the property be taken under execution, or order of sale, or attachment, the officer shall, out of the proceeds of the property found on the leased premises, make payment of what is payable in money, not exceeding one year's rent in arrear. This section shall not affect any lien for taxes, levies, or militia fines.

§ 21. When distress shall be made for rent justly due, and any irregular or unlawful act shall be afterwards done by the party distraining, or his agent, the distress itself shall not be deemed unlawful, nor the party making it be deemed therefor a trespasser from the beginning; but the party aggrieved by such irregularity or unlawful act may, by action, recover full satisfaction for the special damage he shall have sustained thereby.

§ 22. Property distrained for rent reserved, if the same be not replevied, or the payment of the rent be not secured

Property, how disposed of.

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in ten days, or so much as will satisfy the demand and costs, shall be sold by the officer.

§ 23. The same remedy to recover arrearages of rent due on a lease for life or lives shall be allowed, as if such lease were for years.

Death of certain persons not to affect the remedy.

§ 24. A person entitled to rents dependent upon the life of another, may, notwithstanding the death of the latter, have the same remedy, by action or distress, for the rents in arrear, as he might have had if such person were in full life.

§ 25. A husband who has, in right of his wife, any estate in, or right to, any rent in arrear in his wife's life, or his personal representative, may have the like remedy against the tenant who shall be in arrear, or his personal representative, after the death of his wife, as if his wife were living.

Personal representative may distrain.

§ 26. The personal representatives of a person to whom any rent shall have been due and unpaid at the time of his death, may have the same remedy, by action or by distress, for the recovery of the arrears of such rent, that the decedent might have had if living.

Property, how to be sold.

§ 27. When distress shall be made for rent, the officer making the same shall advertise the time and place of the sale, in the same manner that sheriffs are directed to advertise property sold under execution; and shall sell so much thereof as will satisfy the rent and all interest and costs, to the highest bidder, on a credit of three months, with interest from the date, and take from the purchasers bonds and good surety, for the sale money, which he shall return, with the warrant, to the circuit court clerk's office, and upon which, at maturity, if the same be not satisfied, the clerk shall issue execution, directed to the sheriff of any county which the plaintiff may designate.

Distress or attachment may be replevied.

§ 28. A distress for rent may, at any time before a sale of the property, be replevied for three months, by the defendant's giving bond and good surety, to be approved by the officer; whereupon the property seized shall be restored, and the officer shall return the precept and replevin bond to the clerk's office of the circuit court, to be proceeded on as is provided in case of a sale bond.

§ 29. All executions which shall issue on a sale or replevin bond, taken on a distress, shall be indorsed that no security, of any kind, is to be taken.

Penalty for a wrongful distress.

§ 30. If property be distrained for any rent not due, or attached for any rent not due or accruing, or taken under any attachment sued out without good cause, the owner of such property may, in an action against the party suing out the warrant of distress or the attachment, recover *double damages* for the wrongful seizure, and if the property be sold, for double the value thereof.

ARTICLE III.

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§ 1. If any tenant for life or years, shall commit waste during his estate or term, of any thing belonging to the tenement so held, without special license, in writing, so to do, he shall be subject to an action of waste, and shall lose the thing wasted, and pay treble the amount at which the waste shall be assessed.

Waste.

§ 2. The action may be maintained by one who has the remainder or reversion in fee simple after an intervening estate for life or years, and also by one who has a remainder or revision for life or years only, and each of them shall recover such damages as it shall appear that he has suffered by the waste complained of.

Rights of remainder men.

§ 3. An heir may bring and maintain an action for waste, done in the time of his ancestor, as well as in his own time.

§ 4. If a tenant of land commit any waste thereon, after he has aliened it, while he remains in possession, he shall be liable to the party injured for damages.

§ 5. If a tenant in common, joint tenant, or parcener, commit waste, he shall be liable to his co-tenants, jointly or severally, for damages.

§ 6. If a guardian commit waste of the estate of his ward, he shall be liable to the ward for damages, at the expiration of his guardianship.

§ 7. Any person who is entitled to such action of waste, may, instead thereof, bring an action on the case in the nature of waste, in which he shall recover such damages as it shall appear that he has suffered by the waste complained of.

§ 8. If, in any action of waste, or any action on the case for waste, the jury find that the waste was wantonly committed, judgment shall be entered for three times the amount of the damages assessed.

Damages for waste.

§ 9. An action on the case for waste may be brought against the representatives of a tenant, or if instituted in the lifetime of the tenant, it may be revived against his representatives after his death.

§ 10. If the tenant in possession of any land shall, pending a suit to recover or charge said land, commit any waste thereon, the court in which the suit may be pending may order a receiver to take possession of the land.

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CHAPTER XX.

SHERIFFS, JAILERS, AND CORONERS.

ARTICLE I.

Sheriffs.

§ 1. Whenever a commission shall be issued to any person as sheriff, the secretary of state shall certify the fact, and the clerk of the court in which the sheriff shall execute bond shall also certify the fact, and the names of the sheriff and each of his sureties, to the auditor of public accounts.

Oath & bond
of sheriff.

§ 2. Every sheriff, before he enters on the duties of his office, shall, in addition to the oath prescribed in the constitution, take the following oath in the county court of his county:

"I, A. B., do swear that I will do right as well to the poor as to the rich, in all things belonging to my office of sheriff; that I will do no wrong to any man for any gift, reward, or promise, nor for favor or hatred; and in all things I will faithfully and impartially execute the duties of my office, according to the best of my skill and judgment—so help me God."

§ 3. He shall also give an obligation to the commonwealth, in substance as follows:

"We, A. B., principal, and C. D. and E. F., sureties, hereby covenant to and with the commonwealth of Kentucky, that the said A. B., sheriff of _____ county, shall, by himself and deputies, well and truly discharge all the duties of said office, and pay over to such persons, and at such times as they may respectively be entitled to the same, all money that may come to his or their hands as sheriff. This _____ day of _____."

Security to be
given.

§ 4. The sureties in the bond must be good for the amount of all moneys, except what is payable into the state treasury, which will probably pass through the sheriff's hands during his continuance in office. They shall be approved by the county court, and the bond taken by its clerk under its supervision, and witnessed by him or his deputy, and may be put in suit, from time to time, at the cost of any person injured by the acts or omissions of the sheriff, or any of his deputies.

Office of, how
vacated.

§ 5. Whenever a sheriff shall cease to be a resident of the county in which he shall be sheriff, or shall accept any office of trust or profit under the federal government, or any incompatible office under the state government, or shall be convicted of treason or felony, the county court shall enter such fact on its records, and that his office is thereby vacated.

Deputy, how
appointed.

§ 6. Every sheriff may, by and with the approval of the county court, appoint his own deputies, and may revoke the appointment at his pleasure. Before any deputy shall

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proceed to execute the duties of his office, he shall take the oath required to be taken by the sheriff.

§ 7. A sheriff may, by writing, empower any person to execute an original or mesne process. The person, so appointed, shall indorse his action on the instrument empowering him, and shall make affidavit to the truth of the indorsement and attach the same to the process, and deliver the indorsement and affidavit to the sheriff or his deputy, to be returned to the proper office. The indorsement, made as above directed, shall have the same validity and effect in law as if made by the sheriff.

§ 8. The sheriff shall be responsible for the acts of the person appointed under the preceding section, and the person appointed shall be liable to a prosecution for perjury, if he wilfully make a false indorsement verified by his affidavit.

§ 9. A sheriff and his deputies may, for two years after the expiration of his term of office, collect his distrainable fee bills, or those of any other officer, which may have become due and payable and placed in his or his deputy's hands for collection during his term of office, and may make distress for the same, and with his sureties, shall be liable to the person entitled to such fees.

Allowed time
to wind up business.

§ 10. Each sheriff shall, by himself or deputies, execute and make due return of all notices and all process legally issued, directed and delivered to him, against any person or property in his county, or upon any river or creek adjoining thereto. He shall return the time of service of each notice and process, and the time of the levy of each execution, what levied on, when he sold the property seized, who to, and what for, and all other matters touching his duty, and shall subscribe his own name to the return, and, if he be deputy, the name also of his principal.

Duties of.

§ 11. No officer shall return on any process at law, directed to him, that the defendant is not found within his county, unless he shall actually have been at the defendant's residence and have left a true copy of the process. If the defendant be not found by the officer, and be not a resident of the county, the sheriff shall so return.

§ 12. No process or notice on which any legal proceedings are to be founded, except as herein provided, shall be executed on Sunday; the execution of either on that day shall be void. But a writ of *habeas corpus* or process on a charge of treason, felony, or for a riot or breach of the peace, or upon an escape out of custody, may be executed on Sunday.

§ 13. No civil process of arrest shall be executed upon any legal voter attending any election held by authority of law, at which he has a right to vote, or in going to, or returning from, such election, he using reasonable diligence in traveling to and from such an election. The execution of any such process contrary hereto, shall be void..

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§ 14. No sheriff, or other officer, shall take any obligation of or from any person in his custody, for or concerning any matter relating to his office, otherwise than such as is specially directed by law. Every obligation taken by any such officer, by color of his office, in any other manner or form, shall be null and void.

§ 15. No sheriff shall demand or take any other or greater fee or reward for any service or business by him done, than such as shall be allowed by law.

§ 16. Every sheriff shall, on the receipt of an execution, indorse on the back thereof the day of the month and the time of the day he received the same.

§ 17. It shall be the duty of each sheriff and his deputies to receive and collect fines and forfeitures, and all officers' fees listed with him or any of his deputies, and due and payable in his county, during his term of office, and to account for and pay over the same to the persons entitled thereto, at the time and in the manner required by law.

§ 18. Every sheriff shall, upon request, deliver to the person from whom fees are demanded, or to his agent, an account stating distinctly every item of the demand, and offer to give a receipt for the same, before he shall have the power to make his distress therefor.

§ 19. Distress may be made for all officers' fees, after the first day of May next succeeding the rendering of the services, and for fees of witnesses in one month after the allowance of the same by the proper authority. The right of distress shall continue for three years from and after it commences, and no longer.

Penalty for a
false return.

§ 20. Any sheriff who shall, knowingly, make a false or illegal return on any process, or fee bill of any person, by color of his office, more than is justly due, shall be liable to the person injured thereby for triple the damages that shall be assessed therefor.

Certain per-
sons not to be
sureties for.

§ 21. No person who is jailer, or coroner, or judge or clerk of a county court, or county attorney, shall be received as surety for a sheriff in his official bond; nor shall the jailer or sheriff, or any of his deputies, or any county court judge, clerk, or county attorney, be surety for a coroner in his official bond; nor shall any sheriff, coroner, or any of the persons aforesaid, be surety for the jailer in his official bond.

Deputy liable
to principal.

§ 22. When a deputy sheriff shall so act, or omit to act, as to render his principal responsible, and the latter shall discharge such responsibility, the deputy shall be liable over to the principal for all damages and costs, legal and extraordinary, which the latter shall be put to on account of such act or omission.

§ 23. When a sheriff shall die, or otherwise vacate his office, his deputies shall complete the execution of any process in his or their hands, and their acts or omissions in this particular shall be considered as embraced in his official bond.

§ 24. A person entitled to money collected by a sheriff or his deputy, may demand the same from the sheriff, by himself, his attorney at law, or any other person having his written authority therefor.

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Demand for
money collected

§ 25. It shall be the duty of the county court of each county, at the January term next after the sheriff shall give his official bond, and oftener or sooner as they may deem proper, to examine into the sufficiency of the sureties therein, and, if the same be found insufficient, to rule him to give other sureties, and upon his failure to do so, the court shall enter up an order suspending him from acting until he give such sureties, or vacate his office.

Duty of coun-
ty court.

§ 26. The sheriff and his deputies shall be exempted from militia duty and from serving on juries.

Exempt from
militia duty.

§ 27. It shall be the duty of each sheriff, by himself, or his deputies, to execute all persons condemned to be hung, and to convey all persons to the penitentiary condemned to confinement therein; and to execute the sentence of the court in other criminal and penal cases. But the court may, for good cause, order the coroner or jailer to act in the place of the sheriff, in the discharge of those duties.

To execute
persons con-
demned to be
hung.

§ 28. Any sheriff or deputy sheriff, or other like officer, may command and take with him, if need be, the power of the county, or a part thereof, to aid him in the execution of the duties of his office, civil and criminal.

§ 29. A sheriff or other officer may, in the execution of a writ of *habere facias possessionem*, or writ of seizin, break open either the outer or inner door of a dwelling, or any other house on the premises, during the day time.

§ 30. If, in levying a *fieri facias*, the outer door of the dwelling house of the defendant, in which his property is, be fastened, the sheriff or other officer shall not break open the same to seize the property. But if the outer door be open, the officer may enter, and if need be, may break open any inner door to enable him to reach the property. He may break open the outer door of any other than the dwelling house of the defendant in the execution, to enable him to seize the defendant's property, during the day time.

§ 31. The sheriff or other officer may break open the outer, or any other door of the dwelling or other house of a third person, in which the property of the defendant in the execution is fraudulently concealed or kept.

May break open
doors, &c.

§ 32. The sheriff or other officer shall have the same power to break and enter the dwelling and other houses of any person, in executing any other civil process, which is given him to seize property under execution.

§ 33. In executing penal or criminal process, requiring an actual arrest or writ of *habeas corpus*, the sheriff or other officer may break open the outer or any other door of the dwelling or other house of the defendant or of any other person, if it be necessary to enable him to make the arrest.

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§ 34. But if the process do not require an arrest of the defendant, then the officer shall have the same powers, and no more, than are given him in the execution of civil process.

§ 35. If a sheriff shall agree with any person, for a sum certain or other thing, or any kind of compensation or gratuity, to himself or another, to appoint or continue such person or another as his deputy, such agreement shall be deemed a sale of the deputation, and subject both the sheriff and deputy to removal from office on conviction thereof.

36. When a sheriff, or other officer, is, by any process, authorized to receive money from the defendant, or to take bond, bail, or recognizance, before he is committed to jail, the sheriff or other officer, shall exercise the same power after his commitment.

ARTICLE II.

Jailers.

To give bond.

§ 1. The jailer of each county shall enter into an obligation, in the county court, with good surety, to be approved by the court, in substance as follows:

"We, A. B., jailer of county, and C. D. and E. F., his sureties, do hereby covenant and agree with the commonwealth of Kentucky, that the said A. B. shall well and truly execute and do and perform every duty and act as jailer aforesaid, which is, or may be, required by law, during his continuance in office; and that he will, in proper time, pay over to the persons entitled thereto, any money which may come to his hands as jailer. Given under our hands, this day of ."

Which bond may be attested by the clerk, and be put in suit from time to time, by any person injured by the act or omission of the jailer.

§ 2. Every jailer shall be exempted from militia duty and from serving on juries.

§ 3. The county jailer shall also be circuit court jailer for his county, and as such shall discharge and perform all the duties and acts which the law may prescribe.

Powers and duties.

§ 4. The jailer of each county shall receive all persons into the jail who shall be lawfully committed thereto, and safely keep such persons until properly discharged. He shall treat them with humanity, and furnish them with proper food and lodging during their confinement, and shall deliver over such as die in jail to their friends, if requested, or have them decently buried, at the expense of the county.

U. S. may use jails.

§ 5. The United States shall have the right to use the jail of any county, by paying the jailer the same fees allowed by the state. Any jailer shall receive and confine in jail persons properly committed under the laws of the United States, until lawfully discharged.

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§ 6. Each jailer shall have the custody rule, and charge of the jail in his county, and of all persons in the jail, and shall keep the same himself. He shall not reside more than two hundred yards from the jail, and where it is such as admits the residence of a family therein, he shall reside in the jail. A violation of this section shall be deemed a misfeasance in office, and the court may suspend the jailer therefor.

§ 7. Each jailer, when he goes out of office, shall deliver over to his successor the custody of the jail, with its furniture and appurtenances, and of all the persons therein, with all warrants, mittimus, and other official papers, by which prisoners shall have been committed to his custody, or by which they have been liberated therefrom.

Further powers and duties.

§ 8. When the jailer is legally committed to jail, or from any cause the office of jailer of any county shall become vacant, or the jailer shall be legally suspended from the discharge of his official duties, the sheriff of the county shall take the custody of the jail, and of the prisoners therein, and perform and discharge all the duties of jailer, until a successor to the jailer shall be elected or appointed and qualified, or until the suspension shall cease.

If, for any cause, the sheriff cannot or ought not to act, the presiding judge of the county court may so certify, and, by writing, designate a responsible person, who shall act for the occasion.

§ 9. Each county court shall have power to suspend the jailer of the county from acting as such, for such period as it may deem right, when the public interest shall imperatively require the same; but the ground on which the suspension shall be made must, in every instance, be entered on the order book of the court. The presiding judge of the county court may, for any cause he deems sufficient, by his order in writing, during vacation, exercise the same power until the meeting of the next county court.

May be suspended.

§ 10. Process from any court may, in a civil or criminal case, be directed to, and executed by, the jailer of the county, when it shall be made to appear, by affidavit to the clerk of the court, that the sheriff and coroner of the county are interested in the cause, or are, by affinity or consanguinity of kin, as near as second cousin to the defendant, or where one of said officers is so of kin, and the defendant is surety for the other in his official bond, or the other is so partial to the defendant, or is so prejudiced against the person suing out the process, as not to do him justice; or where both of said officers are so partial or so prejudiced, or they and the deputies of the sheriff are sick and unable to act, or are absent from the county; or one is sick and the other is absent, or one of said offices is vacant, and some of said objections shall apply to the other; or where some one of the grounds of objection aforesaid shall apply to one of said

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officers and another of said grounds shall apply to the other; or in a criminal case, where said officers are implicated in the crime with the defendant, or one is so implicated, and some one of the grounds aforesaid shall apply to the other; or where in any case, civil or criminal, its emergency requires immediate action, and no sheriff, nor the coroner, can, in all probability, be procured in time to meet the emergency—in all such cases the law applicable to sheriff shall govern the jailer.

§ 11. It shall be the duty of the county court, from time to time, to prescribe rules for the government and cleanliness of the jail, and the comfort and treatment of prisoners; and the judge of the county court shall inspect the jail at least once a month, and shall have power, by fine or otherwise, to enforce the rules and punish the jailer for neglect thereof, or disobedience thereto.

ARTICLE III.

Coroners.

To give bond.

§ 1. Every coroner, before he enters on the duties of his office, shall enter into a covenant in the county court, with good sureties, to the commonwealth, in substance as follows:

"We, A. B., coroner of county, and C. D. and E. F., his sureties, do covenant to and with the commonwealth of Kentucky, that the said A. B. shall well and truly perform every duty which may be required of him by law, during his continuance in office, and will well and truly pay over to such persons at such times as they may be entitled thereto, any moneys that may come to his hands as coroner. Given under our hands, this day of ."

§ 2. The covenant shall be witnessed by the clerk or his deputy, and the sureties shall be approved by the court. The covenant shall be held to embrace every duty which is by law imposed on the coroner to perform. It may be put in suit from time to time, at the costs of any person injured by the acts or omissions of the coroner.

Duties of.

§ 3. It shall be the duty of the coroner of any county, upon request made, to come and inquire, and upon the view of any person slain, drowned, or otherwise by misadventure or suddenly killed, or where any house be broken, to hold an inquest of twelve good and lawful housekeepers of the county, summoned by himself, upon their oaths to inquire, and say in this manner: If they know in what manner the person came to his death; where, how, and by whom, and who were present; who are culpable of the act or of the force; are they persons of discretion, and can they speak.

§ 4. If any person be found culpable of murder, manslaughter, or of house-breaking, or of being accessory thereto, the coroner shall forthwith arrest and commit such per-

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son to the jail of his county, or cause it to be done by his precept, there to be confined and dealt with according to law. If the person who shall be found culpable, shall have fled, the coroner, or a person deputed in writing by him, may summon aid, and pursue and apprehend him wherever he may be found in the state, and take and commit him to the jail of his county, as above directed.

§ 5. The coroner shall commit to writing the substance of the evidence given before such jury, designating each witness and his testimony. He shall, furthermore, recognize the witnesses examined before him to appear before the circuit court on a designated day, and shall forthwith return the recognizances, with the inquest and testimony so taken, to the circuit court clerk's office of his county.

§ 6. The coroner shall bury the dead bodies of persons over which an inquest is held, or present them to their friends to do so, if required.

§ 7. A writ may, in any case, be directed to the coroner of the county, where an affidavit shall be filed with any county, or circuit, or other court clerk, showing that any one of the grounds of objection stated in the tenth section of the second article, relating to jailers, applies to the sheriff.

§ 8. Where the coroner of a county ceases to reside therein, the county court of the same shall enter the fact on its record, and also that his office is thereby vacated. Any act or omission for which a sheriff may be suspended or his office be declared vacant, shall authorize the county court to suspend the coroner, or declare his office to be vacant.

§ 9. Executions issued on a judgment or decree rendered upon process served by the coroner, shall be directed to and acted on by him. If the process be served by the jailer, the executions on the judgment or decree shall be directed to and acted on by him.

§ 10. The sheriff, jailer, or coroner, may prosecute an appeal or writ of error to the court of appeals from the decision of the county court, to reverse any order suspending either of them from acting, or declaring either of them to have vacated his office. But such appeal or writ of error shall not, during its pendency, have the effect to suspend such order.

§ 11. Whenever the office of sheriff, jailer, or coroner shall become vacant, before the expiration of his constitutional term of office, the county court of his county shall convene and appoint his successor, who shall be commissioned by the governor for the residue of the term for which his predecessor was elected.

§ 12. Whenever the office of sheriff, jailer, or coroner shall become vacant, and one year of the term remains unexpired, the county court of his county shall order an elec-

How vacancies to be filled.

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tion to be held to fill the vacancy, according to law; if there be less than a year unexpired, then the county court shall convene and appoint a successor, to be commissioned by the governor, for the residue of the term.

CHAPTER XXI.

WITNESSES.

Negroes and
Indians.

§ 1. A slave negro or Indian shall be a competent witness in a case of the commonwealth for or against a slave negro or Indian, or in a civil case to which only negroes or Indians are parties, but in no other case. This shall not be construed to exclude an Indian, in other cases, who speaks the English language, and understands the nature and obligation of an oath.

§ 2. No person assessed, or liable to be assessed, with levies for any county, town, or corporation, or religious society, shall, by reason of such assessment or liability, be disabled from giving evidence.

A party to a
suit may be a
witness in cer-
tain cases.

§ 3. No such person, or any officer of a county, or corporation, or town, or religious society, shall be incompetent to give evidence in any case, by reason of his being liable for costs, when he is only a nominal party thereto, and liable to contribute to such costs only in common with other persons assessed with the levies of such county, town, religious society, or corporation.

§ 4. No fiduciary shall be incompetent as a witness, in any case where he has no personal interest, by reason of his being a party thereto, or of his being liable for costs; but if liable for costs, he shall not be competent, unless some person, of proper responsibility, shall undertake, on the record, to pay the same, without recourse upon him. In suits at law, either party, at the instance of his adversary, may be compelled to give evidence upon the trial.

§ 5. Except where it is otherwise expressly provided, no person who has been, or shall be, convicted of felony, any where within the United States, shall be competent as a witness in any case, unless he has been pardoned; nor shall a person convicted of perjury, or subordination of perjury, be a competent witness, although pardoned.

§ 6. If any person shall be disqualified to testify in any suit or action, by reason of being next friend, or of having become bail or surety for costs, or surety in an appeal, or injunction, or other bond, or other instrument or recognizance required to be taken, at the institution of, or during the progress of, such suit or action, he may be discharged from liability by an order of the court, so as to be sworn and examined as a witness. But before this shall be done, another sufficient bail, or surety, or next friend, shall be

substituted in his stead, to be liable, in like manner, and to the same extent, as he would have been.

§ 7. It shall be no objection to the competency of a witness on behalf of the commonwealth, that he has an interest in the property, or is the person on whom the forgery was committed, about which the prosecution is pending.

§ 8. If any person who accepts a summons, or who shall be legally summoned as a witness, to attend any court in this commonwealth, or to appear before commissioners or referees, or other persons appointed by or under the authority of such court, or to give his deposition, or to attend upon an order of survey, or to attend on the execution of a writ of *ad quod damnum*, or on any other legal proceeding, shall fail to attend accordingly, not having a legal excuse for such failure, such person shall be fined ten dollars by the court from which the summons issued.

§ 9. A witness so failing, without such excuse, shall further be liable to the action of the party at whose instance he was summoned, for all damage sustained by the non-attendance of such witness.

§ 10. If any person, so summoned, shall attend, and shall refuse to give evidence to the best of his knowledge, such witness shall be committed to the jail of the county, by the court or judicial officer under whose authority the proceeding is had, there to remain without bail until he shall give such evidence.

§ 11. A witness shall be privileged from arrest in all cases, except treason, felony, and breach of the peace, during his *bona fide* attendance at court, or other place where his attendance shall be required by a *subpœna* duly accepted or executed by an officer or a private person, and in going to such place and returning, allowing one day for every twenty miles, from his place of abode.

§ 12. In all cases in which witnesses are required to attend at any court or other place of procedure, a summons may be issued, at the request of either party, by the clerk of the court, or by the person whose duty it is to superintend the procedure, expressing the day and place where they are to appear, the names of the parties to the controversy, and in whose behalf summoned, directed to the county where the witnesses, or any of them, may be.

§ 13. A witness shall not be compelled to attend, as such, in a civil suit out of the county of his residence, unless his traveling expenses, going and returning, are first paid or tendered to him; nor, except in a criminal prosecution, shall he be compelled to attend as a witness at a place distant more than thirty miles from his residence, but his deposition may, for that cause, be taken in any civil suit.

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Interest in property not to exclude a witness.

Shall be fined for non-attendance.

Refusal to testify.

Privileged from arrest.

Summons to be issued.

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CHAPTER XXII.

BASTARDY.

Who deemed
a bastard.

§ 1. Every child shall be deemed a bastard, within the meaning of this chapter, who shall be begotten and born out of lawful wedlock.

How the father
may be charged.

§ 2. Any unmarried white woman may go before a judge of the county court of the county in which she has been delivered of a bastard child, and accuse any person of being the father of the child. Such judge shall examine her under oath, and reduce her statement to writing, and sign it.

Warrant to
issue, &c.

§ 3. On such examination, if the child appear to be less than three years old, a warrant may be issued, requiring the person accused to be apprehended and brought before a judge of the county court of the county in which he may be found, who shall require him to enter into a recognizance, with good surety, in the sum of three hundred dollars, to appear in the county court of the county in which the warrant issued, on the first day of the next term thereof, and to abide by and perform the judgment of said court.

§ 4. Warrants for bastardy may be directed to and executed by a sheriff or constable, or, in a proper case, by the coroner or jailer.

§ 5. If the person accused shall refuse to give such recognizance, the judge shall forthwith commit him to the jail of his county, there to remain until he give a recognizance, or be otherwise discharged by due course of law.

§ 6. Should the case be continued at any term of the court, the recognizance may be respited, or a new one given, or, on the failure of the accused to give a recognizance, he may be committed to jail.

§ 7. On the trial, the mother of the child may be a witness, unless she be otherwise incompetent. If the party accused desire it, and be otherwise competent, he may be examined on oath; and other evidence may be adduced by either party.

§ 8. If the finding of the jury be in favor of the defendant, he shall be discharged, unless for good cause a new trial be granted.

§ 9. If the finding of the jury be against the defendant, judgment shall be rendered thereon; and the court shall make such order for the keeping, maintenance, and education of the child as may be proper, by charging the father, annually, with such sum and for such period as may have been fixed by the verdict of the jury.

To give surety.

§ 10. The person adjudged to be the father of the child shall thereupon enter into bond, with good surety, to be approved by the court, for paying the sum adjudged, in such instalments as the court may order. In case of his failure, the court shall commit him to jail, there to remain

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until he shall give such bond, or pay the money, or be discharged as an insolvent debtor.

§ 11. If such bond be given, and any instalment shall not be paid according to the stipulations thereof, ten days' notice may be given to the party and his sureties, or either one of them, and a judgment awarded by the county court against such as are notified, for the sum, with interest and costs.

§ 12. If a bastard child shall die, after the person accused has been adjudged to be its father, the father, upon paying what may be due up to the death of the child, shall be discharged from the residue of what he had been adjudged to pay.

§ 13. If the person adjudged to be the father of a bastard child shall appeal, or prosecute a writ of error with a *supersedeas*, from the decision of the county court, and the decision shall be affirmed, the sureties in the appeal or *supersedeas* bond shall be liable for all the father had been adjudged to pay, and also the costs and damages on the appeal.

CHAPTER XXIII.

MASTER AND APPRENTICE.

ARTICLE I.

§ 1. The county court shall have jurisdiction to bind out infant children. It shall be the duty of the court to inquire after, and to put in apprenticeship, such poor orphans and other children within its knowledge, whose relatives or parents, the court shall judge, will not bring them up in moral courses. The court may, in its discretion, bind out the children of a man condemned to confinement in the penitentiary.

Certain children to be bound out.

§ 2. Before an order shall be made, binding out any such child, the person with whom he shall reside shall be summoned to show cause to the contrary.

Notice to be given.

§ 3. Any orphan minor may be bound as an apprentice, by his guardian, or if no guardian, by his mother, with the consent, entered of record, of the county court of the county where the minor may reside.

How a minor may be bound.

§ 4. The term of every such apprenticeship shall be until the minor attains the age of twenty-one years, if a boy; or eighteen years, if a girl.

§ 5. The writing by which any minor shall be bound an apprentice shall be signed by the master and the clerk of the county court, and shall specify the age of the minor, and what art, trade, or business, he is to be taught; that the apprentice shall have proper medical attention, and shall be well fed and clothed, and treated with humanity, and the master shall be bound to give the apprentice a

The indenture.

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good new suit of clothes at the termination of his apprenticeship; and, if he be not a free negro, that he shall be taught to read and write, and common arithmetic, including the rule of three.

§ 6. No person, to whom a child shall be bound, shall have the right to take or send such child out of this state, nor to sell his term of service, or any part thereof, to any other person, nor to give another person the right to control such child.

Penalty for desertion.

§ 7. If an apprentice shall desert his master, he shall be liable to such master for all damage sustained by such desertion.

Penalty for enticing away an apprentice.

§ 8. If any person shall entice away an apprentice, or servant, from his master, he shall pay the master therefor three dollars for every day the apprentice, or servant, shall remain out of the service of the master; and any person who shall, knowingly, conceal, harbor, or employ such servant or apprentice, shall, in like manner, pay the master therefor three dollars per day for every day such apprentice or servant shall be so concealed, harbored, or employed.

County courts to hear complaints, &c.

§ 9. The county court of each county shall receive and hear the complaints of apprentices and hired servants, who reside in the county, against their masters for undeserved or immoderate correction, insufficient allowance of food, raiment, or lodging, or want of medical attention or instruction, and may make such order therein as is right and just, and may discharge the apprentice and bind him to another person, if it shall seem necessary.

§ 10. The court may, in the same manner, hear the complaint of masters against their apprentices, or hired servants, for desertion without good cause, or other misconduct, and may oblige the latter to make retribution, by further service after the expiration of the time for which they were bound.

Apprentices & servants departing from master

§ 11. If any apprentice or hired servant shall unlawfully depart from the service of his master, a judge of any court, upon complaint made to him by the master, or his agent, shall issue his warrant to apprehend such apprentice or servant, and to bring him before him, or some other judge; and if the complaint shall be supported, the judge shall order the apprentice to be returned to his master, or may commit him to the county jail, there to remain not more than twenty days, if not sooner discharged by the master.

To whom the warrant may be directed.

§ 12. The judge's warrant may be directed to any officer, or other person, by name, and shall empower him to convey the offender to the place of residence of the master, although it may be in another county, or to the jail of the county where the master resides.

§ 13. The servitude of an apprentice shall cease at the death of the master.

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ARTICLE II.

§ 1. All white persons who shall come to this state under a contract to serve another in any occupation, shall be compelled to perform the contract specifically during the time thereof, or so much of the same as shall not exceed seven years. Infants under fourteen years, under contract entered into by their guardian or father, shall serve to the age of twenty-one years, or such shorter time as the contract shall fix.

Servants to be compelled to execute their contracts.

§ 2. A servant bound to service shall be provided, by his master, with a sufficiency of wholesome food, clothing, and lodging, and medical attention, and at the end of his service, the servant shall receive from the master a good full new suit of clothes, suited to the season of the year.

To be clothed.

§ 3. The master of such servant may assign the benefit of his contract to any person whom the servant may, in the presence of a judge of a court, consent to serve, the judge attesting such consent, which must be in writing. The right of such service shall, on the death of the master, pass to his personal representative or devisee.

How servant may be assigned

§ 4. If such servant shall abscond, the necessary expenses paid by the master, in apprehending him and bringing him home, shall be repaid by further service, after such rates as the county court of the county shall direct.

§ 5. All contracts entered into between master and servant, during the period of service, shall be void, except such as are clearly beneficial to the servant.

§ 6. No negro, mulatto, or Indian, shall, at any time, hold or purchase any white servant; if so held or purchased, such servant shall be thenceforth free.

CHAPTER XXIV.

EVIDENCE.

§ 1. Acts and resolutions of the general assembly, local or private, may be given in evidence, without being specially pleaded; and the appellate court shall take judicial notice of such as appear to have been relied on in the inferior court.

Of what courts are to take judicial notice.

§ 2. All courts, tribunals, officers, and persons, shall take notice of the official signature of any officer of this state or of the United States.

§ 3. Copies of the journal of either house of the general assembly, printed by the public printer, shall be received as evidence, for any purpose for which the original journal could be received.

Copies of journals to be evidence.

§ 4. A copy of any record or paper, properly filed or lodged in the clerk's office of any court, or of the secretary

Copies attested by the keeper of documents evidence.

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Suits may be
founded on co-
pies.

Copies of or-
dinances of
towns, &c., evi-
dence.

Entries in ex-
ecution books.

Auditor's cer-
tificate evidence

Record books
may be re-bound
and transcribed.

Such transcript
to be evidence.

How executions
may be issued
on lost records.

Proceedings
in case of bonds
destroyed.

of the commonwealth, treasurer, register, or auditor, or of the surveyor of a county, attested by the person having the legal custody thereof, shall, upon proof of the execution of the original, be admitted as evidence in lieu thereof.

§ 5. A copy of any such writing as is embraced in the preceding section may be filed in a suit thereon, and the defendant shall plead thereto, as if the original were filed.

§ 6. A copy from the mayor's office of any city, or from the official books of any town, or religious society, of an ordinance or by-law for the rule of such city, town, or society, attested by the keeper thereof, shall be evidence for any purpose for which the original could be received.

§ 7. A copy from an entry in a clerk's or justice's execution book, of the date of an execution that issued from such office, and to whom delivered, and when returnable, shall be evidence, in any proceeding against the officer, and his sureties, to whom it shall be entered as delivered.

§ 8. The certificate of the auditor of public accounts of the fact, and of the time of the return of any real estate, as delinquent, or of the sale thereof for taxes, shall be *prima facie* evidence of the facts therein stated.

§ 9. Any county court may order any of the books or records in the clerk's office of such court, or in the office of the surveyor of the county, to be re-bound; or, when obliterated, torn, or in a ruinous condition, to be transcribed in new books; and shall make a reasonable allowance therefor, which shall be chargeable to the county. The circuit courts shall also have the same power over the books and records of their clerk's offices, and the expense thereof shall be paid out of the treasury.

§ 10. After any book, that shall be so transcribed, is examined by the judges of the county or circuit court, and an order shall be made on the records of the court that the same is correct, the same faith and credit shall be given to the transcript that the book or record transcribed was entitled to.

§ 11. Where an original judgment or decree, or a delivery, replevin or forthcoming bond taken thereon, has been destroyed, obliterated or lost, upon satisfactory evidence, after reasonable notice to the opposite party, showing that it had existed, its contents, and that it had not been discharged, the court or the justice of the peace that rendered the judgment or decree, or in whose office such bond was filed, may, on the motion of the person, or his representative, in whose favor the judgment, decree or bond was rendered or taken, if it appear proper, order an execution to issue thereon.

§ 12. Where the order of the county court, appointing an administrator or guardian, or any person to any place, station or trust, or the bond executed in the county court by any such person, or any officer, shall be destroyed, obliterated,

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ted, or lost, the court shall, by the appropriate proceeding, due notice thereof being given, supply the record, and compel such person to execute a new bond, with good and sufficient sureties; and, on his failure to do so, shall enter up an order vacating his office or station.

§ 13. Where the records and papers of any court shall be destroyed, defaced, or obliterated, such court shall appoint a commissioner, who shall have power and authority to fix on a convenient place to meet and sit, from time to time, giving reasonable public notice thereof.

§ 14. The commissioner may, at the instance of any person, issue a summons and cause the attendance of witnesses, and take evidence, in writing, of such witnesses, relative to any record or paper so destroyed, defaced, or obliterated; which deposition shall be legal evidence, and shall be returned to the clerk of the court, and safely kept by such clerk. The commissioner shall not remain in office longer than one year.

§ 15. The commissioner shall be paid a reasonable compensation for his services, out of the county levy.

§ 16. When any record book, containing judgments, decrees, orders, executions, or proceedings of a court, shall be lost, destroyed, or become illegible, and the same can be again entered correctly by means of any writing, such court may order its clerk to have the matter re-entered, and the same, when done and approved by the court, shall have the same effect as the original. But any party to be affected thereby, shall first have reasonable notice of such proceeding.

Lost records
to be supplied.

§ 17. When any record book of wills, deeds, and other instruments of writing, or any such instrument, shall be filed in any clerk's office, and shall be lost, destroyed, or become illegible, the clerk in whose office such book or paper was, upon the production to him of any original paper which was recorded in such book, or an attested copy from the record, or of any thing else in said book, or of any paper so filed, shall, on the request of the person interested, record the same anew, and shall certify on the record whether it was recorded from the original or a copy, and how the same was authenticated; and such record shall be *prima facie* evidence.

§ 18. The records and judicial proceedings of any court of the United States, or of any state, attested by the clerk thereof, with the seal of the court annexed, if there be a seal, and certified by the judge, chief justice, or presiding magistrate of the court, to be attested in due form, shall have such faith and credit given to them, in this state, as they would have at the place whence the said records come.

How records
of other states
to be authenti-
cated.

§ 19. All records and exemplifications of office books, kept in any public office of the United States, or of a sis-

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Attestation of
records of other
states.

ter state, not appertaining to a court, shall be evidence in this state, if attested by the keeper of said records or books, and the seal of his office, if there be a seal.

§ 20. Exemplifications from the books of the executive department of the United States, or any papers filed therein, shall be evidence, when attested by the president or the chief of either of the departments; or from any state or territory, of like books or papers, when attested by the governor or the secretary of state thereof, under his official seal.

Foreign records
how to be au-
thenticated.

§ 21. A copy from the record books of any court, or of any register of births and marriages, or other instruments of writing, or a copy of any law or ordinance of any state, nation, province, colony, city, or town, in any place out of the United States, if the same shall have been registered in due form, according to the laws of such sovereignty, so certified and attested by the keeper of such record or register, and his attestation shall be certified under his official seal, by any consul, charge d'affaires, or minister of the United States, resident within the sovereignty where the record is kept, shall be evidence in this state.

Where a person
shall be presump-
ed dead.

§ 22. If any person who shall have resided in this state, go from and do not return to this state for seven successive years, he shall be presumed to be dead, in any case wherein his death shall come in question, unless proof be made that he was alive within that time.

§ 23. The unwritten, or common law, of any other of the United States may be proved as facts by the parol evidence of persons learned in that law. The printed books of cases adjudged in the courts of a sister state, may also be admitted as evidence of such law.

How foreign
laws to be prov-
ed.

§ 24. The existence, and the tenor or effect, of all foreign laws, beyond the limits of the United States, may be proved by the parol evidence of persons learned in those laws. But if it appear that the law in question is contained in a written statute, the court may reject such parol evidence, unless it be accompanied by a copy of the statute.

§ 25. The printed laws of the United States, or of any state or territory thereof, which have been, or shall be, received in the secretary's office of this state, and which shall have been printed under the authority of the United States, or such state or territory, or a copy thereof, when duly certified by the secretary of state for this commonwealth, shall be admitted and received as evidence of such laws.

CHAPTER XXV.
DESCENT AND DISTRIBUTION.

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§ 1. When a person having right or title to any real estate of inheritance, shall die intestate as to such estate, it shall descend in parcenary to his kindred, male and female, in the following course :

1. To his children and their descendants ; if none, then

2. To his father ; if none, then

3. To his mother, brothers, and sisters, and their descendants ; if none, then

4. One moiety of the estate shall go to the paternal, and the other to the maternal kindred, in the following course :

5. *First*, to the grandfather ; if none, then

6. To the grandmother, uncles, and aunts, and their descendants ; if none, then

7. To the great grandfathers, or great grandfather, if there is but one ; if none, then

8. To the great grandmothers, or great grandmother, if there is but one, and the brothers and sisters of the grandfathers and grandmothers, and their descendants ; and so on in other cases without end, passing to the nearest lineal male ancestors, and, for the want of them, to the nearest lineal female ancestors in the same degree, and the descendants of such male and female ancestors.

9. If there is no such kindred to one of the parents, the whole shall go to the kindred of the other. If there is neither paternal nor maternal kindred, the whole shall go to the husband or wife of the intestate ; or, if the husband or wife is dead, to his or her kindred, as if he or she had survived the intestate and died entitled to the estate.

§ 2. When any or all of a class first entitled to inherit are dead, leaving descendants, such descendants shall take, *per stirpes*, or by stocks—that is to say, by representation—the share of their respective deceased parents.

§ 3. Collaterals of the half-blood shall inherit only half so much as those of the whole-blood ; and among collaterals of the half-blood, the ascending kindred shall have double portions.

§ 4. In making title by descent, it shall be no bar to a party, that any ancestor, through whom he derives his descent from the intestate, is or has been an alien.

§ 5. Bastards shall be capable of inheriting and transmitting an inheritance, on the part of or to the mother ; and bastards of the same mother shall be capable of inheriting and transmitting an inheritance, on the part of each other, as if such bastards were born in lawful wedlock of the same parents.

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§ 6. If a man having had a child by a woman, shall afterwards marry her, such child, or its descendants, if recognized by him before or after marriage, shall be deemed legitimate.

§ 7. Any person born within ten months after the death of the intestate, shall inherit from him, in the same manner as if he were in being at the time of such death.

§ 8. When a person dies intestate and without issue, having real estate of inheritance, the gift of either of his parents, such parent, if living, shall inherit the whole of such estate.

§ 9. If an infant dies without issue, having title to real estate derived by gift, devise, or descent from one of his parents, the whole shall descend to that parent and his or her kindred, as hereinbefore directed, if there is any: and if none, then in like manner to the other parent and his or her kindred; but the kindred of one shall not be so excluded by the kindred of the other parent, if the latter is more remote than the grandfather, grandmother, uncles, and aunts of the intestate, and their descendants.

§ 10. No parcener shall have any privilege over another in any election, division, or matter to be done or made, concerning lands which shall have descended to them.

Distribution of
personal estate.

§ 11. Where any person shall die intestate as to his personal estate, or any part thereof, the surplus, after payment of funeral expenses, charges of administration, and debts, shall pass and be distributed among the same persons, and in the same proportions, to whom and in which real estate is directed to descend, except as follows:

First. The personal estate of an infant shall be distributed as if he had died after full age.

Secondly. An alien may be a distributee as though he were a citizen.

Thirdly. A husband shall have the whole surplus of a deceased wife's personal estate, except he shall have only a life estate in her slaves.

Fourthly. If the intestate leaves issue, his widow shall have one-third, and if no issue, one-half of such surplus; but he shall have only the use for her life of such slaves as may be in her said third or half.

Fifthly. If an intestate leaves a widow, the following property shall be set apart by the appraisers of the estate, and vest in such widow for the use and benefit of herself and the infant children of the intestate, if any, residing in the family:

One work beast, or yoke of oxen; one plough and gear; one axe; one hoe; two cows and calves; two beds, bedding, and furniture; one loom, and spinning wheels and cards for the same; all the spun yarn and manufactured cloth and carpeting manufactured by the family, necessary for its use; one pot; one oven; half dozen plates; half

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dozen cups and saucers; one coffee pot; one tea pot; half dozen knives and forks; one table; the family bible; one saddle and its appendages; one bridle; six chairs, or so many as shall not exceed eight dollars in value; all the poultry on hand; five head of sheep; and wearing apparel; also, a sufficiency of provisions, including breadstuff and animal food, to sustain the widow and infant children residing with her, for one year; and if there is not a sufficiency of provisions on hand for that purpose, then so much of the live stock suitable for that purpose, and of the growing crop, if any, as may be necessary to supply the deficiency. But if there are no such infant children residing with the widow, and there are adult or infant children not residing with her, the provision contained in this section for the widow, or the value of such portion thereof as she receives, shall be charged to her in the distribution.

§ 12. A personal representative may distribute the estate of a decedent nine months after his death.

§ 13. When a widow claims her dowable and distributable share of her husband's estate, she shall be charged with the value of any devise or bequest to her by his will. Or she may, though under full age, relinquish what is given her by the will, and thereupon receive her dower and distributable share, as if no will had been made; but such relinquishment must be made within twelve months after the probate, and acknowledged and left for record with the clerk of the court where probate was made, or acknowledged before two subscribing witnesses, and proved by one of them before and left with the clerk.

Widow's renunciation, &c.

Nothing herein shall preclude the widow from receiving her dowable and distributable share, in addition to any devise or bequest made to her by the will, if such is the intention of the testator, plainly expressed in the will, or necessarily inferable therefrom.

§ 14. Except where a devise or bequest is made to the widow by the will of her husband, not renounced by her, she shall not be deprived of her share of his slaves, though they are emancipated by his will; but she shall be compensated therefor out of his other personal estate, if there is a sufficiency thereof for that purpose, after payment of debts. When only a part of the slaves is set free, her share shall be taken out of those not emancipated, if they are enough. If any part of the slaves set free, is necessary for her share, all of those set free shall be hired out, and the hire paid to her, until she is compensated for her share.

Distribution.

§ 15. The foregoing provisions in favor of the wife are all subject to this condition: if she voluntarily leaves her husband and lives in adultery, she shall have no part of the personal estate of which he dies intestate, unless her husband, after she so left him, became reconciled to her and suffered her to live with him.

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Advancements
brought into
hutchpot.

§ 16. Where the husband separates from the wife and lives apart from her in adultery, and she dies without a reconciliation and cohabitation, he shall have no part of her personal estate as a distributee.

§ 17. Any real or personal property or money, given or devised by a parent or grandparent to a descendant, shall be charged to the descendant, or those claiming through him, in the division and distribution of the undeviseed estate of the parent or grandparent, and such party shall receive nothing further therefrom, until the other descendants are made proportionately equal with him, according to his descendible and distributable share of the whole estate, real and personal, devised and undeviseed.

The advancement shall be estimated according to the value of the property when given.

The maintaining or educating, or the giving of money to a child or grandchild, without any view to a portion or settlement in life, shall not be deemed an advancement.

§ 18. Advancements made to distributees shall not be taken as part of the decedent's personal estate, in estimating the distributable share of the widow therein.

CHAPTER XXVI.

FRAUDULENT CONVEYANCES AND DEVISES.

§ 1. Every gift, conveyance, assignment, or transfer of, or charge upon, any estate, real or personal, or right or thing in action, or any rent or profit thereof, made with the intent to delay, hinder, or defraud creditors, purchasers, or other persons, and every bond or other evidence of debt given, suit commenced, decree or judgment suffered, with like intent, shall be void, as against such creditors, purchasers, and other persons.

This section shall not affect the title of a purchaser for valuable consideration, unless it appear that he had notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.

§ 2. Every gift, conveyance, assignment, transfer, or charge made by a debtor, of or upon any of his estate, without valuable consideration therefor, shall be void as to all his then existing liabilities, but shall not, on that account alone, be void as to creditors whose debts or demands are thereafter contracted, or as to purchasers with notice of the voluntary alienation or charge; and though it be adjudged to be void as to a prior creditor, it shall not therefor be decreed to be void as to such subsequent creditors or purchasers.

§ 3. Every such voluntary alienation of or charge upon personal property, unless the actual possession, in good faith, accompanies the same, shall be void as to a purchaser

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without notice, or any creditor, prior to the lodging for record of such transfer or charge be recorded in the office of the county court for the county where the alienor or person creating the charge resides.

§ 4. Where any loan of personal property is pretended to have been made to any person with whom, or those claiming under him, possession shall have remained for five years, without demand made and pursued by due process of law on the part of the pretended lender, or where any reservation or limitation, by way of condition, reversion, remainder, or otherwise, is pretended to have been made in the alienation of such property so possessed, the absolute right shall be deemed to be with the possession, in favor of a purchaser without notice, or any creditor of the person so remaining in possession, unless the written evidence of the loan, reservation, or limitation be in like manner duly recorded in the county where the person resides, or is contained in a properly recorded will.

§ 5. A devisee shall be liable for all debts and liabilities of the testator, in the same manner as the heir of the testator would have been liable, if the property devised had descended to the heir.

§ 6. The same actions which lie against the personal representatives, may be brought jointly against him and the heir or devisee of the decedent, or both, and shall not be delayed for the non-age of any of the parties.

§ 7. The last two sections shall not apply to a devise made in good faith, for the payment of any of the testator's debts, if such devise have not the effect of giving precedence in favor of one creditor to the prejudice of another.

§ 8. When the heir or devisee shall alien before suit brought, the estate descended or devised, he shall be liable for the value thereof, with legal interest from the time of alienation, to the creditors of the decedent or testator; but the estate so aliened shall not be liable to the creditors, in the hands of a *bona fide* purchaser for valuable consideration.

§ 9. To the extent of assets received, the representative, heir, and devisee of an heir or devisee, shall be chargeable for the liabilities of either of the latter as such, to the creditors of the original decedent or testator.

§ 10. The heir or devisee may be sued in equity by a creditor, for any liability of the decedent or testator, and he may also, in such suit, if demanded, obtain, by the proper procedure, a lien on any specified property, descended or devised, not theretofore aliened, but not so as to prejudice thereby any other creditor.

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CHAPTER XXVII.

SURETIES AND CO-OBLIGORS.

§ 1. When a surety or his representative wishes, for good cause, to be relieved from further liability, as such, in the official bond of any officer, he may, by written notice to the officer, require him by a named day to appear and give a new bond, with other surety, before the court in which, or whose clerk's office, the original was given or is kept; or, if not so given or kept in any court or clerk's office, then before the circuit court for the county of the officer's residence.

The officer shall have reasonable notice, of not less than ten days, of such proceeding, if he be within the state. If not within the state, thirty days' notice shall be given, by advertisement posted at the court house door of the county in which he resides or last resided, or by publication in some newspaper printed in the county, if there be any such printed therein, or written notice left at his residence.

§ 2. If a new bond be given, the surety shall not be bound for any act of the principal thereafter. If the officer fail to give a new bond on the day named, or such other reasonable day as the court may prescribe, he shall, by order of the court, be removed from his office.

§ 3. The surety of any fiduciary, or other person, other than a personal representative or guardian, giving bond, with surety, pursuant to law or order of court, before entering on the duties of his trust or employment, may in like manner be relieved, by requiring the execution of a new bond, with other surety; or, on the failure of the principal to give the same, the court shall revoke or suspend his powers, and make such other orders as may thereupon be needful, for the benefit of the estate or trust confided to him.

§ 4. The surety of any officer, or of any such fiduciary, or of such other person, or of any person for whom he may be bound by private agreement, may, by attachment, restraining order, *ne exeat*, or other order out of chancery, obtain indemnity, or coerce the principal to give indemnity, by adequate security against his liability as such surety.

§ 5. A co-obligor or co-contractor may, in like manner as in the last section named, obtain indemnity for his liability for any or all of the other obligors or contractors, whether the debt be due or not, where the other obligor has removed, or is about to remove himself, or his property or the greater part thereof, out of the state, or is wasting his estate, or is about to sell the same, with intent to cheat his creditors.

§ 6. No such order as indicated in the last two sections shall be issued, unless the complaint is verified by affidavit,

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and the complainant first gives bond, with good surety, to satisfy the defendant all costs and damages he may sustain by reason of the order, if it be improperly obtained.

§ 7. Where a surety pays the whole, or any part of a debt or liability for which he is bound as such, he may recover the amount, with interest from time of payment, from the principal, by action at law, or by motion after ten days' notice in writing. He may also sue a co-surety, separately, or as a joint defendant with the principal, in such proceeding, and in like manner recover judgment against him, separately or jointly, at the same time, for his proper part of the debt or liability so paid, as if the sureties were the sole obligors; and if one or more of several co-sureties be insolvent, or reside out of the state, the recovery against the solvent and resident surety or sureties, shall also be for a proper part of the share of liability pertaining to such insolvent or non-resident surety. If the surety afterwards make further payment on the debt or liability, he may again have like remedy therefor. But where the payment is made, except under judgment or decree, in a suit of which the principal or co-surety had notice, nothing herein shall preclude either of them from making such defense as he might have made against the original demand.

§ 8. Where the surety pays the whole or part of a judgment or decree, he shall have a right to an assignment thereof, from the plaintiff or the plaintiff's attorney, in whole or in part, and such assignment shall give him the right to sue out or use any existing execution, or otherwise control the judgment or decree for his own benefit, against the other defendants, after satisfaction in full to the plaintiff therein, so far as to obtain satisfaction from the principal for the whole amount so paid by the surety, with interest, or from any co-surety, his proper part of such payment, according to the principles of the last section. Such assignment shall also transfer, to the surety so paying, the benefit of any lien existing under or by virtue of such judgment or decree; and the right to the assignment shall exist, though the money was made or secured by sale of the property of the surety, under execution.

§ 9. Co-obligors or co-contractors shall, as between each other, have the full benefit of the last two sections, as if they were co-sureties.

§ 10. A surety, co-obligor, or co-contractor, or one of several defendants to a judgment or decree, may, by notice in writing served in person within the state on the creditor or plaintiff or his attorney, require him to sue or issue execution; and if the creditor shall not sue, to the next term thereafter at which he can obtain judgment, and in good faith prosecute the suit with reasonable diligence, or if the plaintiff shall not, within ten days thereafter, sue out exe-

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cution, and in good faith prosecute the collection thereof, such co-surety, co-obligor, co-contractor, or defendant shall be discharged from all liability as such, except for the proper share of such co-obligor, co-contractor, or defendant, according to the then existing condition of the several obligors, contractors, or defendants; and in any joint suit against the whole, or separate suit against him, judgment shall be rendered against him separately, and only for such proper share.

§ 11. If the plaintiff in any bond having the force of a judgment, shall, at any time for the space of a year, whilst he is entitled to have execution, fail to issue execution, and in good faith prosecute the collection thereof, the surety in such bond shall be released from all liability as such, and any execution thereafter issuing on the bond shall be so indorsed.

§ 12. A surety shall be discharged from all liability under any judgment or decree, after the lapse of seven years without any execution issued thereon, and prosecuted in good faith for the collection thereof; and a surety in any bond given in the course of any judicial proceeding, shall be discharged from all liability thereon, unless suit be brought thereon within seven years after the accruing of the cause of action.

§ 13. A surety for an executor, administrator, guardian, or curator, or for a sheriff to whom a decedent's estate has been transferred, shall be discharged from all liability as such, to a distributee, devisee, or ward, when five years shall have elapsed without suit, after the accruing of the cause of action, and after the attaining of full age by the devisee, distributee, or ward; but the *laches* of one, shall not affect the right of another.

§ 14. A surety in any obligation or contract, other than those provided for in the next two preceding sections, shall be discharged from all liability thereon, when seven years shall have elapsed without suit thereon, after the cause of action accrued.

§ 15. The limitations given in the next three preceding sections shall not apply to so much of the time elapsed when there was no executor, administrator, or other person authorized to sue, nor to the six months during which suit cannot be brought against a personal representative; nor to any delay assented to by the surety, in writing. And if judgment or decree be rendered for the plaintiff, in any case provided for in those three sections, and the same be afterwards reversed or arrested, so that the plaintiff takes nothing thereby, he may commence another suit within one year thereafter. And if such surety shall abscond, conceal himself, or by removal from the state, or otherwise, obstruct or hinder his being sued, the time of such obstruction shall not be computed as part of the time of limitation in said

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sections allowed. And if such judgment or decree be obstructed by appeal, supersedeas, or injunction, the time of such obstruction shall also be disallowed.

§ 16. If a sheriff or other officer is compelled to pay the whole, or any part, of an execution, by reason of some default of his concerning the same, he shall be entitled to an assignment of the judgment or decree, and a substitution in the place of the plaintiff, in the same manner as is herein provided in favor of a surety paying a judgment or decree.

CHAPTER XXVIII.

CONTRACTS.

§ 1. No action shall be brought to charge any person,

First, for a representation or assurance concerning the character, conduct, credit, ability, trade, or dealings of another, made with intent that such other may obtain thereby credit, money, or goods; nor

Secondly, upon a promise to pay a debt contracted during infancy, or a ratification of a contract or promise made during infancy; nor

Thirdly, upon a promise as personal representative to answer any debt or damage out of his own estate; nor

Fourthly, upon a promise to answer for the debt, default, or misdoing of another; nor

Fifthly, upon any agreement made in consideration of marriage, except mutual promises to marry; nor

Sixthly, upon any contract for the sale of real estate, or any lease thereof for longer term than one year; nor

Seventhly, upon any agreement which is not to be performed within one year from the making thereof;

Unless the promise, contract, agreement, representation, assurance, or ratification, or some memorandum or note thereof, be in writing, and signed at the close thereof by the party to be charged therewith, or by his authorized agent. But the consideration need not be expressed in the writing: it may be proved when necessary, or disproved by parol or other evidence.

§ 2. A seal or scroll shall in no case be necessary to give effect to a deed or other writing, but a signature without seal shall have the same efficacy for every purpose as if a seal were affixed thereto; and all writings so executed shall stand upon the same footing with sealed writings, having the same force and effect, and upon which the same actions may be founded. But this section shall not apply to an assignment by indorsement on a bond, note, or bill; nor shall it alter any law requiring the state or county seal, or the seal of a court, corporation, or notary, to any writing.

Written contracts, seals and scrolls.

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§ 3. The consideration of any writing with or without seal, may be impeached or denied by plea verified by oath.

§ 4. The execution of a writing on which a suit is founded, or its assignment, shall not be denied but by plea verified by oath.

§ 5. Every contract or assurance made or given in consideration, in whole or in part, of any ticket or share in a lottery, or share in a prize therein, is declared null and void.

Assignments.

§ 6. All bonds, bills, or notes, for money or property, shall be assignable, so as to vest the right of action in the assignee; but not to impair the right to any defense, discount, or offset that the defendant has and might have used against the original, or any intermediate assignor, before notice of the assignment to the plaintiff.

§ 7. In an action on any assignment of a writing, it shall not be necessary to aver the consideration for the assignment.

Joint obligations.

§ 8. The heir, devisee, and representative, or either, of one jointly bound with another in any contract or agreement, judgment or decree, and dying in the lifetime of such other, may be charged in the same manner as if the contract or agreement had been several as well as joint, and the judgment or decree had been separate as against the decedent.

Obligations to a dead person.

§ 9. A written obligation to a person or persons, who, or some of whom, happen to be dead at the time of its execution, may be proceeded on by the representative of such person, or by the survivor, as if it had been executed in the lifetime of such dead person or persons.

Bills exchange.

§ 10. Where any bill of exchange, drawn on any person out of the United States, shall be protested for non-payment or non-acceptance, it shall bear ten per cent. per year interest, from the day of protest, for not longer than eighteen months, unless payment be sooner demanded from the party to be charged. Such interest shall be recovered up to the time of the judgment, and the judgment shall bear legal interest thereafter. Damages on all other bills, are disallowed.

§ 11. Bills, drafts, or checks, payable in bank notes or currency, or other funds, wheresoever drawn or payable, shall be deemed negotiable, and treated in all respects as if drawn for money, except as to the value of the currency in which they are payable.

§ 12. The notarial protest, under the notarial seal, of the non-acceptance or non-payment of a bill, shall be evidence of its dishonor; but the protest may be disproved.

§ 13. Petition and summons or debt may be brought against all or some or any one of the parties to a bill of exchange; and a failure of proof as to one or more defendants, shall not prevent judgment against the others.

CHAPTER XXIX.

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INTEREST AND USURY.

§ 1. Legal interest shall be at the rate of six dollars upon one hundred dollars for a year, and at the same rate for a greater or less sum, and for a longer or shorter time.

§ 2. All contracts and assurances made, directly or indirectly, for the loan or forbearance of money, or other thing, at a greater rate than legal interest, shall be void for the excess over the legal interest. The amount loaned, with legal interest, may be recovered on any such contract or assurance; but if the lender refuse, before suit brought, a tender of the principal, with legal interest, he shall pay the costs of any suit brought on such contract or assurance.

§ 3. A chancery court may grant relief for any such excess of interest, and, to that end, compel the necessary discovery from the lender or forbearer.

§ 4. Such excess of interest may be recovered from the lender or forbearer, although the payment thereof was made to his assignee.

§ 5. Partial payment on a debt bearing interest shall be first applied to the extinguishment of the interest then due.

§ 6. A judgment, except for malicious prosecution, libel, slander, or injury to the person, and a decree, shall bear legal interest from its date. A judgment or decree may be for the principal and accrued interest; but, if rendered for accruing interest, it shall bear interest only according to its terms.

§ 7. Any indebtedness incurred, or evidenced by judgment or decree rendered out of the state, shall be presumed, unless the contrary be shown, to bear like interest as if it had been incurred, or the judgment or decree rendered in this state.

§ 8. In the discount of any evidence of debt, corporations authorized to loan money, may take the discount in advance, at the rate of one dollar in the hundred for every sixty days, and at that rate for a longer or shorter period, including the three days of grace. If any greater discount is taken, the whole contract for interest shall be void, and anything paid thereon as interest may be recovered back by the person paying the same, or any creditor of his may recover the same by bill in equity.

§ 9. Nothing in the last section shall prevent such corporation, in discounting a bill of exchange, from taking the fair rate of exchange between the place where it is bought and that where it is payable, in addition to the discount for interest as therein named. But such privilege of buying exchange, at less than par value, shall not be used to disguise a loan of money at a greater rate of discount than in the last section allowed.

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CHAPTER XXX.

CURRENCY.

§ 1. It shall not be lawful to make, offer to pay, or pass, or offer to pass any note, bill, order, or other thing passing by delivery, as a circulating medium in lieu of or as the representative of money, unless it be the note or bill of some banking institution, legally incorporated, in the United States.

If a note, bill, order, or other such thing, be of the denomination of two dollars, or under that amount, it shall be presumed to have been made, paid, or passed in violation of this section, unless the contrary be proved.

§ 2. Every party to any such note, bill, order, or other thing, and every person passing the same, shall be liable to the holder for the amount thereof, with treble costs, and ten per cent. on the amount, by way of damages.

§ 3. Every person who shall make, pass, circulate, or in any way aid in making, passing, or circulating any such note, bill, or order, or other thing, shall be imprisoned not more than six months, or fined not less than ten dollars and not more than five hundred dollars, or both so fined and imprisoned.

§ 4. One-fourth of the fines recovered by indictment under this act, shall be for the benefit of the attorney of the commonwealth.

§ 5. The attorney for the commonwealth may, by petition in chancery, supported by affidavit, without surety, obtain an injunction or restraining order against any person or corporation, for an apprehended violation of this act, who may be violating or preparing to violate it, and the court shall enforce obedience to its order by fine and imprisonment.

He may obtain a like order against any person or corporation in this state, acting as the agent of any foreign company or corporation for the redemption of its bills or notes within this state, so as to facilitate their circulation here; and every person or corporation, so acting as such agent, shall be fined for each offense, from one hundred to one thousand dollars.

§ 6. Certificates of deposit, or of stock, issued in such form or manner as to pass by delivery, or to circulate from one to another like money or bank notes, shall be deemed to be within the prohibition of this act.

§ 7. No corporation, not expressly authorized thereto by law of this state, shall loan money, discount any evidence of debt, or deal in the buying and selling of exchange for profit.

Every person, acting as an officer, servant, or agent of a corporation, who shall aid such corporation in a violation

of this section, shall, for every such offense, be fined from fifty to five hundred dollars.

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All contracts made in violation of this section shall be void, and all money paid by way of interest, discount, or for difference of exchange, in violation thereof, may be recovered back by the party paying, or his creditor.

§ 8. Nothing in the last section shall preclude any corporation from receiving notes, bonds, or bills, in payment of pre-existing liabilities, or as collateral security for any debt, or preclude any corporation, chartered by this state, from purchasing exchange for remittance in the regular course of its proper business, or from selling it when so received.

CHAPTER XXXI.

BOATS AND NAVIGATION.

§ 1. Except the captain, all the officers and hands, and owners of hands employed on board a steamboat, or any ship, brig, schooner, or sloop, shall have a lien on the boat or vessel, her engine, tackle, furnishing, and apparel, for their wages, whether contracted for or earned in or out of the state, with a preference or priority therefor over any other debt due from the owner of the boat or vessel, and over all other liens thereon.

Who may have
a lien on boats.

Mechanics, tradesmen, and others shall also have a like lien for work, supplies, materials, stores and provisions, done or furnished on or towards the building, repairing, fitting, furnishing, or equipping the boat or vessel in this state, with a preference or priority therefor over any other debt of the owner, except to the officers and hands, and over all other liens thereafter created. When so done or furnished out of the state, there shall be a like lien therefor, which shall have precedence next after that given when done or furnished in this state; but if done or furnished out of the state subsequent to that done or furnished in this state, the liens shall be joint and equal.

§ 2. A steamboat, or other vessel in the last section named, and owner, shall also be liable to indemnify the party injured, for any damage unlawfully done by her to any other boat, vessel, or river craft, or to any other property, through the willful or negligent conduct of her officers or crew, and for any other damage willfully or negligently committed by her officers or crew, whilst acting for her as such.

§ 3. A steamboat, or any other boat or vessel, shall also be liable to indemnify the owner of any slave, for any damage he may sustain by reason of the conveying or attempting to convey the slave thereon out of the state, or from one part of the state to another, without the consent,

A boat liable
for conveying a
slave out of the
state.

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in writing, of the owner of the slave, or unless the owner or person having the rightful control of the slave be also a passenger on the boat or vessel. This section shall also apply when the slave is taken on board of the boat or vessel at any place out of this state.

The captain and owner of the boat shall also be personally liable to the owner for such slave.

The captain, or other officer of a boat or vessel, who shall permit a slave to be so carried on board thereof, or any other person employed on the boat or vessel who shall assist in secreting a slave on board, for the purpose of being so carried, shall be fined not more than one thousand dollars, or imprisoned not more than six months, or both.

§ 4. The damage sustained by the owner shall be ascertained in any proceeding in chancery, under the second or third section, by a jury impaneled in the court where the proceeding is instituted.

Lien may be
enforced by at-
tachment.

§ 5. The lien given in the first section, and the liability mentioned in the second and third sections, may be enforced by attachment out of chancery, in any county where the boat or vessel may be found at the time of the issuing or service of the process. The attachment of the boat, or of any of her furniture, tackle, or apparel, taken from on board of her by the officer serving the attachment, shall stand in lieu of all service of process, or other notice, to the owner of the boat.

§ 6. Before issuing an attachment under this act, bond, with good surety, shall be given to the "owners of the boat," by that designation, to indemnify the owners for all damages and costs incurred thereby, if it shall appear that the attachment has been wrongfully obtained; on which bond suit may be brought, and recovery had by any person injured by the attachment. But nothing herein shall vitiate a bond taken in any other mode.

§ 7. The boat, vessel, or other property attached under this act, may be replevied by bond with good surety, to the complainant, in a penalty to be named in the order for the attachment, conditioned to have the property attached forthcoming, if the court shall so order, or otherwise perform the decree of the court.

§ 8. All persons having liens under this act against any boat or vessel, may unite in a suit to enforce the same; and any person having a lien, who is not so united, may, by petition filed with leave of court, become a co-complainant in any suit pending to enforce a lien, without the issuing of any other or additional process on such petition.

Notice to be
given in case of
lien.

§ 9. The liens given by this act shall not be enforced against a purchaser, without actual notice thereof, unless suit be instituted within one year from the time the cause of action accrued, or unless notice thereof be indorsed on, or attached to, the enrollment of the boat or vessel.

§ 10. Any person finding any boat, vessel or water craft gone or going adrift, or lodged, after having been adrift in any river, may take up and secure the same. He shall, within six days thereafter, cause her and her contents to be viewed and valued by three housekeepers, not related to himself, who shall certify, over their signatures, a full description, with the value thereof; which certificate he shall, within six days of its date, deliver to some justice of the peace of the county, who shall, within fifteen days thereafter, after entering it in his stray book, deliver the same to the clerk of the county court, to be retained by him, and entered in the county stray book.

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Boats adrift.

§ 11. The taker up of such boat, vessel, or water craft, shall, in addition to the cost of entering the certificate of appraisement, be entitled to the following compensation: For each steam boat, ship, brig, schooner, or sloop, twenty dollars; for each horse boat, six dollars; for each flat boat, if full, or more than half loaded, fifteen dollars; if half, or less than half loaded, ten dollars; and if unloaded, five dollars; for each barge or keel boat, loaded in whole or in part, ten dollars; if unloaded, five dollars; for each wood flat, three dollars, and ferry flat, two dollars; for each skiff, canoe or pirogue, seventy-five cents; for each raft of logs, timber, or plank, one dollar for each platform thereof.

Compensation
for taking up
such.

The taker up shall also be entitled to a reasonable compensation, by the day, to be ascertained by a justice of the county, for taking care of the same.

§ 12. If the appraised value of the thing so taken up does not exceed two dollars, and the owner does not appear within two months, from the time of taking up, and pay, or tender to the taker up what he is entitled to, the right to the thing shall vest in the taker up. If the value exceed two dollars, and the owner does not appear within the two months, and pay, or tender to the taker up what he is entitled to, then the thing shall be delivered to some constable of the county, who, after ten days' notice, by advertisements posted at the court house door and two other public places in the county, shall sell the same to the highest bidder. The constable shall, out of the proceeds of sale, after deducting his own commission, first pay the claim of the taker up, and the residue pay over, within ten days, to the clerk of the county court. If the owner do, within one year from the sale, appear and establish his claim, to the satisfaction of the clerk, the proceeds of sale shall be paid over to him, otherwise they shall be paid to the taker up.

§ 13. Whoever, without consent of the owner, shall take away any boat or vessel, shall pay the owner seven dollars, in addition to the amount of damage the boat or vessel may thereby sustain, and the costs of the owner in bringing her back.

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§ 14. The first and second sections of the act of 20th December, 1794, entitled, "an act concerning boatmen," are repealed.

Navigation.

§ 15. To avoid collision between steam boats in a river, the following rules shall be observed:

1. In ordinary stages of water, and where there is room enough, the descending boat shall generally keep the middle of the channel, and leave room for the ascending boat to pass on either side.

2. The ascending boat shall, in all stages of water, generally keep to the bar or shore nearest to her at the time of meeting another boat, until they shall have cleared each other, and shall not attempt to cross the channel in front of the descending boat, so as to endanger her by collision.

3. If there be apparent danger of collision, the descending boat shall keep her position, wherever that may be at the time of meeting, stop her engine, and permit the ascending boat to do whatever may be necessary to avoid the collision.

4. If the danger of collision be imminent, both boats shall back their engines.

5. If either boat be out of its proper position, that shall not justify the other in running against her, if by reasonable care and vigilance on the part of such other boat, the collision can be avoided.

6. When two boats meet in the night, in fog, or in narrow channels, the descending boat shall keep the middle of the channel, and stop her engine until the following signals have been given and answered, and the boats have cleared each other:

First. The ascending boat shall, as soon as the other boat is in sight and hearing, toll her bell once if she wishes to pass on the side of the channel to her right, or twice if she wishes to pass on the left side. This signal the descending boat shall answer, by one stroke of the bell. If not so answered, the bell of the ascending boat shall be tolled repeatedly, at short intervals, until answered.

Second. If the ascending boat make no such signal in proper time, the descending boat may make it.

Third. Should a signal be given, which cannot be safely complied with, a negative answer shall be immediately given, by ringing the bell five or six times, in quick succession.

Fourth. When such negative answer is given, the descending boat shall stop her engine, and the ascending boat reduce her speed, so as merely to keep her headway, until the boats have cleared each other.

Fifth. When a channel is too narrow to pass with safety, the boat first in it shall have the preference,

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and the other shall wait until she has passed. But if both boats are about to enter such channel at the same time, the ascending boat shall wait.

7. During the night, steamboats and other vessels, flatboats and rafts, whether fastened to the shore, anchored, or under way, shall keep a light burning, in some visible position.

§ 16. If the collision between two boats be the result of mutual and equal fault, or if it cannot be ascertained which was in fault, the loss or damage ensuing from the collision shall be apportioned between the two boats according to their relative values, exclusive of cargo.

§ 17. It shall not be lawful for steamboats to run races, or make trial of speed with each other; and if any damage occur during any such contest, from the bursting of a boiler or cylinder, the presumption shall be, in favor of a passenger, owner, or insurer of property on board, that the damage was occasioned by the misconduct of the officers of the boat.

Steamboats
not to run races.

§ 18. It shall be the duty of the master and other officers of a steamboat carrying gunpowder as freight or cargo, to stow the same in some safe part of the boat, not near to any articles liable to spontaneous combustion, and where it will not be necessary to carry a light in discharging cargo. Every boat carrying gunpowder as freight or cargo, shall give notice thereof, by advertisement printed in large letters, and kept suspended or posted in some public position in the cabin, so as to be visible and easily legible at the distance of ten feet.

Duty of master
when carrying
powder.

The master or other officer in charge of a boat, who shall fail to comply with this section, shall be fined one hundred dollars, and be personally liable for all damage that may ensue from carrying powder in the boat.

§ 19. Any person who shall place or keep gunpowder on board a steamboat, to be carried as freight or cargo, without giving notice thereof and obtaining the consent of the master or some other officer of the boat, shall be fined one hundred dollars, and be liable for all damage that may ensue from the carrying of the powder in the boat.

§ 20. A printed copy of this and the last five sections of this act shall be kept visibly posted or suspended in some public position in the cabin of every steamboat, whilst navigating the Mississippi, Ohio, or other river in this state; and for failure to do the same, the master and owner, or either, shall be fined one hundred dollars for each week that the same is omitted.

§ 21. Whoever shall erect, or cause to be erected, or aid in erecting, in or across any navigable river or stream, a fish dam, slope, stop-wire, or hedge, or any other obstruction to the passage of fish or the navigation of such river or stream, shall be imprisoned not less than thirty nor more

Fish dams not
to be erected on
navigable
streams.

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than ninety days, and fined not less than ten nor more than fifty dollars.

But this section shall not embrace mill-dams or bridges erected in or across navigable streams pursuant to law.

§ 22. Every continuance of an erection or obstruction, prohibited by the last section, for five days, shall be deemed a distinct offense within the same; and the persons living on either or both sides of the stream, nearest to the obstruction, shall be severally liable for the continuance thereof, in the same manner as if he or they were proved guilty of making the same.

Rifles to be
cleared. &c.

§ 23. The several county courts of the counties through or adjoining which runs any navigable stream, may lay it off into precincts, and appoint an overseer for each, whose duty it shall be to cause the rifles within his precinct to be cleared out, and the trees and brush therein, at the points of islands or the bends, to be cut away and removed.

The court shall allot the overseer a competent number of hands, from the laboring male tithables living nearest to his precinct, who shall be exempt from working on roads, during the year for which they are allotted to work on the stream.

A copy of the appointment of the overseer, with a list of the hands assigned him, shall be made out by the clerk of the court and delivered to the sheriff, who shall deliver the same to the overseer, under the rules, and subject to the fines, in relation to the same duty in regard to overseers of roads.

§ 24. The overseer so appointed, and the hands so allotted to him, shall be subject to the same penalty for failing or refusing to work, or otherwise to do their duty as such, as is prescribed for a like failure or refusal as to a highway.

§ 25. When a navigable stream is a boundary between two counties, their respective county courts shall designate what part of the stream shall be kept in repair by each, by dividing the stream as equally as may be between them, according to distance and amount of the work to be done.

The county court first making the order for laying off precincts, shall elect which end to take, and immediately transmit a copy of that order to the court of the other county; in which order there shall be designated the limits which that county takes upon itself to work. The remainder of the co-terminous stream, the other county shall, in like manner, work and keep in repair. But the court of the latter may, before the expiration of a year after such notice, notify the court of the former, that, for the ensuing year, the two counties shall change districts; and they shall thereafter, from year to year, alternate the districts to be worked by each, until an umpire, mutually agreed upon by the two courts, or by a circuit judge not a resident

of either county, shall permanently divide and fix the respective districts of each; and thenceforth each shall work its district so assigned.

§ 26. If any person shall build, erect, or place, or cause to be built, erected, or placed, or aid therein, in the Kentucky, Green, or Barren river, within the influence of slack-water, any pier, dock, wharf, or embankment, or any other kind of obstruction, so that the current or channel of the river shall be changed or affected thereby, or that the same shall form a lodgment for the accumulation of drift, sediment or deposit, that may change or affect the channel or current, he shall be fined three dollars for every day any such obstruction shall exist.

§ 27. The president, directors, agents, and managers of every bridge now built, or which may hereafter be allowed to be built across either of those rivers, shall keep their abutments, piers, pillars, and other works free from drift and all other obstructions tending to alter or change the channel or current; and either of such persons, failing so to do, shall be fined five dollars for every day any such drift or obstruction shall be permitted to remain, and furthermore liable to any person whose property may be injured thereby.

Neither this nor the last section shall apply to works temporarily erected in the construction of a bridge, nor to works to prevent the washing away of the river bank, nor to the making of landing places which do not change or alter the current or channel.

No pier or dock to be erected within the influence of slack-water.

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CHAPTER XXXII.

GAMING.

§ 1. Every contract, conveyance, transfer, or assurance for the consideration, in whole or in part, of money, property, or other thing won, lost, or bet at any game, sport, pastime, or wager, or for the consideration of money, property, or other thing lent or advanced for the purpose of gaming, or lent or advanced at the time of any betting, gaming, or wagering, to a person then actually engaged in betting, gaming, or wagering, shall be void.

All gaming contracts declared void.

§ 2. If any person shall lose to another at one time, or within any twenty four-hours, five dollars or more, or property or other thing of that value, and shall pay, transfer, or deliver the same, such loser, or any creditor of his, may recover the same, or the value thereof, from the winner, or any transferee of the winner, having notice of the consideration, by suit brought within five years after the payment, transfer, or delivery.

Property lost at gaming may be recovered back.

Recovery may be had against the winner, although the payment, transfer, or delivery was made to his endorsee, assignee, or transferee.

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And, if the conveyance or transfer were of real estate, or the right thereto, in violation of the first section of this chapter, the heirs of the loser may recover it back by suit brought within two years after his death, unless it shall have been passed to a purchaser in good faith for valuable consideration without notice.

§ 3. Such loser or his creditor, or the persons designated in the preceding section, may have discovery and relief in chancery; but when so obtained, the winner shall be discharged from all penalty and forfeiture for having won the money or other thing, which, or its value, is so recovered back.

If the person losing does not sue, a stranger may.

§ 4. If such loser or his creditor do not sue for the money or thing lost, within six months after its payment or delivery, and prosecute the suit to recovery with due diligence, any other person may sue the winner and recover treble the amount or value of the money or thing lost, if suit be so brought within five years from the delivery or payment. One-half of what is so recovered shall be for the person suing, and the other half for the commonwealth. The loser, creditor, or other person first suing, after the six months, to have the preference, if the suit be prosecuted to recovery with due diligence.

§ 5. The stakeholder of any money or other thing that may be staked on any bet or wager, shall, when thereto notified, return the same to the person making the stake or deposit, and for failing to do so, the amount or value of the stake may be recovered from him by the party aggrieved.

Penalty for keeping bank or gaming table.

§ 6. Whoever shall set up, exhibit, or keep for himself or another, or shall procure to be set up, exhibited, or kept, any faro bank, gaming table, machine or contrivance used in betting, or other game of chance, whereby money or other thing is or may be won or lost, shall be fined five hundred dollars and costs, and imprisoned till the same are paid, or imprisoned not more than one year, or both so fined and imprisoned; shall be deemed infamous after conviction, and be forever thereafter disqualified from exercising the right of suffrage and from holding any office of honor, trust or profit.

Any such bank, table, or machine, or articles used for carrying on such game, together with all money or other thing staked or exhibited to allure persons to bet, may be seized by any magistrate, sheriff, constable, or police officer of a city or town, with or without a warrant, and upon conviction of the person setting up or keeping the game, such money or other thing shall be forfeited—one-half for the use of the person making the seizure, and the other half for the use of the commonwealth—and such table, machine, and articles shall be burnt or destroyed.

And though no person be convicted as the setter up or keeper of such table or game, yet if a jury shall, in a

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summary proceeding, find that the money, table, or other things were used or intended to be used for the purpose of such gaming, they shall be so condemned and forfeited.

§ 7. Whoever shall permit any such game or table, as is mentioned in the last section, to be set up, kept, or exhibited in any house, boat, or float, or on any premises in his occupation or under his control, or shall lease the same or any part thereof for that purpose, shall be fined from two hundred and fifty to five hundred dollars and costs, and imprisoned till the same are paid.

For permitting gaming table in house, boat, &c.

If the offender be a tavern keeper, coffee house keeper, or other retailer of spirituous liquors, he shall be fined five hundred dollars, forfeit his license, and never be again licensed.

After proof of the setting up, keeping, or exhibiting of such table or game in any such house, boat, float, or place, it shall be presumed to have been with the permission of the person occupying or controlling the same, unless the contrary be clearly proved.

§ 8. Any person arrested for violating either of the last two sections shall be held to bail in the sum of six hundred dollars. Whoever shall cause himself to be entered as prosecutor on any indictment under those sections, and stand responsible for the costs, shall be entitled to one-half, and the prosecuting attorney shall be entitled to one-fourth of the fine recovered; but no prosecutor shall be deemed necessary.

Persons arrested to be held to bail.

§ 9. Whoever shall invite, persuade, or otherwise induce another to visit any place where gaming is carried on, shall be fined from fifty to five hundred dollars, and moreover be responsible to such other, and his creditors, for whatever he may lose in gaming at such place.

Penalty for enticing to game.

§ 10. Whoever shall suffer any game whatever, at which money or property is won or lost, to be played in a house, boat, or float, or on premises in his occupation or under his control, shall be fined from two hundred to five hundred dollars for each offense.

For allowing gaming in house, &c.

§ 11. If any person, by playing or betting at any game or wager, at any time within the space of twenty-four hours, shall win or lose twenty dollars or upwards, or the value thereof, he shall be fined a sum equal to half the value of what he shall so win or lose.

§ 12. Two justices of the peace may cause any person charged with having no visible estate, lawful trade or profession, but supporting himself for the most part by gaming, to be brought before them, and if the charge appears to be well founded, shall require surety for his good behavior in the sum of one hundred dollars, for one year, or commit him to prison until he give the same; and if after giving the same he shall, during the year, play for or bet any money or thing at any game whatever, he shall be deemed to have broken his recognizance.

Professed gamblers, how to be arrested.

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Who may be
indicted as a
common gamb-
ler.

§ 13. Any person who is without any lawful trade or profession, but supports himself for the most part by gaming, may be indicted as a common gambler, and upon conviction be fined from fifty to two hundred dollars and costs, or imprisoned not more than six months, or both, and committed till fine and costs are paid; and, furthermore, shall give surety for his good behavior in the penalty of five hundred dollars for one year, or be committed to prison for one year or until he gives such surety; and if after giving the same he shall, during the year, bet any money or thing at any game whatever, he shall be deemed to have broken his recognizance.

§ 14. A grand jury may cause any person to be summoned before them as a witness, who shall be compelled to testify as to any knowledge he may possess, touching any unlawful gaming in the county during the preceding twelve months, and if he refuse to testify on oath, he shall be committed to prison until he submits, and be fined from ten to thirty dollars, and a like sum for each daily repetition of the contempt.

Oath of every
town officer.

§ 15. It shall be the duty, and a part of the oath of office of every town or city marshal, or his deputy, or other like police officer, that he will endeavor to the best of his ability to detect and prosecute all gamblers and others violating the laws against gaming.

§ 16. Any such officer willfully refusing or neglecting to perform his duty according to the last section, shall be fined from ten to five hundred dollars.

Evidence of
witness in pros-
ecutions for ga-
ming not to
criminate him-
self.

§ 17. In any prosecution for a penalty against gaming, it shall be no exemption for a witness that his testimony may criminate himself; but no such testimony given by the witness shall be used against him in any prosecution except for perjury, and he shall be discharged from all liability for any gaming so necessarily disclosed in his testimony; and, furthermore, the person against whom he testifies shall not be received to prove any gaming theretofore by such witness.

Attorney's fee
to be taxed.

§ 18. There shall be allowed and taxed as costs, under all convictions for violation of the laws against unlawful gaming, a fee of ten dollars to the commonwealth's attorney; and all prosecutions and suits arising under said laws, may be had within five years after the cause of action arose or the offense committed, and not afterwards, except as provided in favor of the wife, children, and next of kin of a loser, for the recovery of real estate.

Billiard tables

§ 19. If any person shall set up, or cause to be set up, or permit to be played upon or keep any billiard table, he shall be fined from one hundred to a thousand dollars and costs; and every time such table shall be played upon, it shall be a distinct offense; and, upon conviction of the offender, the table, with all the implements and furniture used in playing

thereon, shall be forfeited, burned, or destroyed. And, furthermore, the offender shall be committed to prison until the fine and costs are paid.

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§ 20. When there is more than one owner, setter up, or keeper, or lessee of such billiard table, each shall be severally liable for such penalties.

§ 21. A judge or justice of the peace may, by his warrant, cause any house or building to be searched, by night or by day, for the detection of any billiard or gaming table, and if admission be not given on demand made, the officer or other person in charge of the warrant, shall force an entrance, seize the table, and all implements used therewith, and all money or other thing staked or exhibited thereon, and arrest the keeper thereof.

Buildings may be searched.

§ 22. Any setter up or keeper of a billiard or gaming table, may be required by a judge or justice of the peace to give security in six hundred dollars for his appearance at the next circuit court of the county, to answer the charge, and be of good behavior for one year; and on failure, shall be committed to prison until after the next term of said court or until the security be given; and if, after giving the security, he shall, within the year, keep or permit any such table to be used, it shall be deemed a breach of the recognizance.

Security may be required of keeper of billiard table.

§ 23. These prohibitions and penalties shall apply to any table upon which is played any game substantially the same as that commonly known by the name of billiards, by whatever name the game may be called.

§ 24. The fine for keeping or setting up a billiard table shall be one-third for the use of the informer, if there be one, and one-third for the use of the prosecuting attorney.

§ 25. Any white person who shall play with a free negro or slave at any game of cards, or with dice, or at any other game whatever, whereby money or other thing of value shall be won or lost, shall be fined not more than fifty dollars.

Fine for a white person gaming with a free negro or slave.

Approved March 24, 1851.

CHAPTER 618.

AN ACT to establish a levy and monthly County Court for Jefferson county.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky,* That there shall be a levy county court for the county of Jefferson held on the first Monday in every March, July and November, and as much oftener as the same may be convened by order of its presiding judge, or of any three of its justices entitled to set therein at the time.

A levy county court established.

First. The levy court shall have all the jurisdiction now held by the county court of Jefferson county, or which may

Its jurisdiction.

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Of whom the
court to be com-
posed.

Vacancies, how
filled.

What number
to constitute a
quorum.

The pay to the
justices.

A monthly
county court to
be held.

Its jurisdiction.

hereafter be conferred on the county courts of the state, for the disposal of which a majority of its justices are or may be required to be present, and shall have no other jurisdiction.

Second. The judges of the court shall be a presiding judge, one justice from each justice of the peace district in the county; the justices from each district taking the duty annually in rotation; and if they cannot agree which shall serve the first year after their election, the presiding judge shall determine it by lot.

Third. In case of a vacancy in the office of the justice whose year it is to serve, or if, from any cause, he cannot attend a levy court, the other justice from his district shall act in his place.

Fourth. A majority of the members of the court shall be a quorum for the transaction of any business, and a majority of the quorum necessary to any decision.

Fifth. Each justice shall be entitled to two dollars a day for every day he attends the levy court, to be paid out of the county levy; but he shall not be paid for more than six days in any one year.

§ 2. That a monthly county court for said county shall be held on the second Monday of every month, and said presiding judge shall be the sole judge thereof.

First. The monthly court shall have all the rest of the jurisdiction now belonging to the county court of Jefferson, or which may hereafter be conferred on the county courts of this state, in the exercise of which a majority of all the justices shall not be required.

Second. It shall also have jurisdiction over the settlement of the accounts of personal representatives, guardians, curators, and committees of lunatics and idiots, and the jurisdiction now held by the Louisville chancery court over any of those subjects, except by bill in chancery, is repealed.

Third. It shall also have jurisdiction of all such civil suits, motions, or proceedings, of which the Jefferson circuit court or the Louisville chancery court now has jurisdiction, where the debt or damages sued for in virtue of any tort or contract shall not exceed one hundred dollars, exclusive of costs. And in all cases where the debt sued for, or the damages claimed exceed fifty dollars, the complainant or plaintiff, as the case may be, shall pay to the clerk of the court a tax of fifty cents, which shall be accounted for and paid into the treasury, as other taxes are accounted for and paid into the treasury.

Fourth. It shall also have exclusive jurisdiction for the trial of all appeals from a justice of the peace; of all traverses under writs of forcible entry and detainer, and of all writs of replevin upon distress warrants for rent taken or sued out in said county. Replevy bonds taken under distress warrants for rent now returnable to the circuit court,

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shall be returned to, and proceeded upon from the clerk's office of said county court.

Fifth. It shall be governed in the exercise of the exclusive jurisdiction hereby given by the law now governing therein the said circuit and chancery courts, except where the same would be plainly inapplicable to its peculiar structure.

Sixth. Its regular terms shall begin the second Monday of every month, and end the Saturday next preceding the second Monday in the ensuing month.

Seventh. All suits and motions, whether at law or in equity, the process in which has been served five days before the first day of a term, shall be triable at that time.

Eighth. Its business shall be arranged on the docket, and conducted in all respects, as is or may be required by law in a circuit court, except that, in the trial of appeals which now go to the county court, no jury shall be allowed; and except, also, that a trial may be had by a jury of six, unless one of the parties demands a full jury of twelve men. For a verdict by a jury of six, a jury fee of only two dollars shall be charged.

Ninth. It may, by rule of court, limit to one hour the duration of any oral argument before court or jury, which shall not be revoked or suspended, for the purpose of any particular case, unless so done before the argument has commenced.

Tenth. The presiding judge may hold the court at any time; and, instead of a continuance to the next term, may, in any case, adjourn its trial to a future day in the same term.

Eleventh. Its first term shall commence on the second Monday in June next; and any suit may be brought therein after the presiding judge and clerk of the court have qualified.

Twelfth. The presiding judge shall receive an annual salary of twelve hundred dollars. The city of Louisville shall, in quarterly payments, pay eight hundred dollars thereof, and the other four hundred dollars shall be paid by the county of Jefferson, out of the county levy.

Thirteenth. Execution may issue five days after the rendition of judgment or decree.

§ 3. Appeals and writs of error shall lie from said levy and monthly courts direct to the court of appeals, except where an appeal or writ of error is now, or may hereafter be, expressly allowed to the circuit court; and neither shall be allowed except where the matter in controversy is over the value of twenty dollars, exclusive of costs.

§ 4. The presiding judge shall not practice law whilst holding the office.

§ 5. The act, entitled, "an act to organize county courts in the several counties," passed at the present session of the

First term,
when held.

Compensation,
how paid.

Appeals may
be taken from
said court.

Presiding judge
not to practice
law.

Jefferson ex-
empt from the
general county
court law.

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general assembly, shall not apply to the county of Jefferson.

Approved March 24, 1851.

CHAPTER 621.

AN ACT providing for the relief and discharge of securities for public officers.

May file petition

Proceedings thereon.

Proceedings in case of a failure to give a new bond.

For what cause case to be continued.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky,* That it shall be lawful for any person who now is, or who may hereafter become, a security for a public officer, to file a petition in the office of the clerk of the circuit court of the county in which the public officer resides, or may reside, alledging that he is in danger of loss by reason of his securityship, and the clerk shall issue a summons against the officer, warning him to appear before the judge of said court, at the next term thereof, to answer it; and on the summons being returned executed ten days before the term, said court shall order said officer to give bond with new surety, to be approved of by the court, in the same penalty, and with the same conditions prescribed and annexed, in and to the original bond, if given, shall relieve said security from all liabilities and responsibilities arising from the malfeasance, misfeasance, or nonfeasance in office of said officer, subsequent to the execution of the bond with new surety, and direct an order to be entered releasing the security to that extent.

§ 2. That, in the event the said officer shall, within the time fixed and required by the court, fail or refuse to give the bond with new surety, the court shall decree the security to stand discharged from all liability and responsibility for said officer, arising from his malfeasance, misfeasance, or nonfeasance in office subsequent to the filing of the petition.

§ 3. That, if the summons should not be returned executed ten days before the term, the proceedings on the petition shall be continued until the next term, unless the parties shall agree otherwise.

Approved March 24, 1851.

CHAPTER 622

AN ACT to amend an act, entitled, an act to organize County Courts in the several counties, approved March 11, 1851.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky,* That the presiding judges of the county courts in this commonwealth shall hold the quarterly terms of their courts at the court house in their respective counties as hereinafter directed, to-wit:

In the county of Fulton, on the fourth Monday in January, April, July, and October.

In the county of Hickman, on the third Monday in January, April, July, and October.	1851. Hickman
In the county of Ballard, on the second Monday in February, May, August, and November.	Ballard
In the county of McCracken, on the third Monday in February, May, August, and November.	McCracken
In the county of Marshall, on the first Monday in March, June, September, and December.	Marshall
In the county of Calloway, on the fourth Monday in March, June, September, and December.	Calloway
In the county of Graves, on the fourth Monday in March, June, September, and December.	Graves
In the county of Livingston, on the fourth Monday in February, May, August, and November.	Livingston
In the county of Crittenden, on the second Monday in January, April, July, and October.	Crittenden
In the county of Trigg, on the third Monday in January, April, July, and October.	Trigg
In the county of Caldwell, on the second Monday in February, May, August, and November.	Caldwell
In the county of Christian, on the second Monday in March, June, September, and December.	Christian
In the county of Union, on the third Monday in March, June, September, and December.	Union
In the county of Hopkins, on the second Monday in March, June, September, and December.	Hopkins
In the county of Henderson, on the first Monday in March, June, September, and December.	Henderson
In the county of Todd, on the second Monday in January, April, July, and October.	Todd
In the county of Daviess, on the third Monday in March, June, and September, and the second Monday in December.	Daviess
In the county of Hancock, on the third Monday in January, April, July, and October.	Hancock
In the county of Breckinridge, on the fourth Monday in January, April, July, and October.	Breckinridge
In the county of Meade, on the first Monday in March, June, September, and December.	Meade
In the county of Hardin, on the second Monday in February, May, August, and November.	Hardin
In the county of Larue, on the first Monday in March, June, September, and December.	Larue
In the county of Grayson, on the second Monday in January, April, July, and October.	Grayson
In the county of Ohio, on the fourth Monday in March, June, September, and December.	Ohio
In the county of Muhlenburg, on the second Monday in March, June, September, and December.	Muhlenburg
In the county of Logan, on the first Monday in March, June, September, and December.	Logan

1851.	In the county of Simpson, on the second Monday in March, June, September, and December.
Simpson	
	In the county of Allen, on the first Monday in March, June, September, and December.
Allen	
	In the county of Monroe, on the third Monday in March, June, September, and December.
Monroe	
	In the county of Barren, on the second Monday in March, June, September, and December.
Barren	
	In the county of Butler, on the third Monday in January, April, July, and October.
Butler	
	In the county of Edmonson, on the second Monday in January, April, July, and October.
Edmonson	
	In the county of Hart, on the second Monday in January, April, July, and October.
Hart	
	In the county of Warren, on the third Monday in January, April, July, and October.
Warren	
	In the county of Green, on the fourth Monday in January, April, July, and October.
Green	
	In the county of Adair, on the first Monday in January, April, July, and October.
Adair	
	In the county of Lincoln, on the first Monday in March, June, September, and December.
Lincoln	
	In the county of Pulaski, on the fourth Monday in March, June, September, and December.
Pulaski	
	In the county of Casey, on the first Monday in March, June, September, and December.
Casey	
	In the county of Wayne, on the fourth Monday in February, May, August, and November.
Wayne	
	In the county of Clinton, on the first Monday in January, April, July, and October.
Clinton	
	In the county of Russell, on the fourth Monday in January, April, July and, October.
Russell	
	In the county of Cumberland, on the second Monday in January, April, July, and October.
Cumberland	
	In the county of Taylor, on the third Monday in January, April, July, and October.
Taylor	
	In the county of Shelby, on the first Monday in April, July, October, and the third Monday in December.
Shelby	
	In the county of Bullitt, on such days in March, June, September, and December, as the presiding judge may designate.
Bullitt	
	In the county of Spencer, on the third Monday in March, June, September, and December.
Spencer	
	In the county of Boyle, on the first Monday in March, June, September, and December.
Boyle	
	In the county of Nelson, on the third Monday in March, June, September, and December.
Nelson	
	In the county of Washington, on the first Monday in March, June, September, and December.
Washington	
	In the county of Marion, on the second Monday in March, June, September, and December.
Marion	

In the county of Mercer, on the second Monday in March, June, September, and December.	1851. Mercer
In the county of Anderson, on the third Monday in February, May, August, and November.	Anderson
In the county of Garrard, on the second Monday in March, June, September, and December.	Garrard
In the county of Carroll, on the second Monday in January, April, July, and October.	Carroll
In the county of Kenton, on the third Monday in January, April, July, and October.	Kenton
In the county of Oldham, on the fourth Monday in March, June, September, and December.	Oldham
In the county of Henry, on the first Monday in March, June, September, and December.	Henry
In the county of Trimble, on the third Monday in March, June, September, and December.	Trimble
In the county of Gallatin, on the second Monday in January, April, July, and October.	Gallatin
In the county of Grant, on the fourth Monday in March, June, September, and December.	Grant
In the county of Owen, on the first Monday in January, April, July, and October.	Owen
In the county of Boone, on the first Monday in March, June, September, and December.	Boone
In the county of Scott, on the fourth Monday in March, June, September, and December.	Scott
In the county of Bourbon, on the second Monday in February, May, August, and November.	Bourbon
In the county of Nicholas, on the fourth Monday in January, April, July, and October.	Nicholas
In the county of Mason, on the second Monday in March, June, September, and December.	Mason
In the county of Bracken, on the second Monday in January, April, July, and October.	Bracken
In the county of Harrison, on such days in the months of March, June, September, and December, as the presiding judge shall designate.	Harrison
In the county of Pendleton, on the third Monday in March, June, September, and December.	Pendleton
In the county of Campbell, on the first Monday in January, April, July, and October.	Campbell
In the county of Montgomery, on the first Monday in January, April, July, and October.	Montgomery
In the county of Bath, on the second Monday in March, June, September, and December.	Bath
In the county of Fleming, on the fourth Monday in February, May, August, and November.	Fleming
In the county of Morgan, on the second Monday in March, June, September, and December.	Morgan
In the county of Carter, on the fourth Monday in January, April, July, and October.	Carter

1851.	In the county of Lawrence, on the second Monday in January, April, July, and October.
Lawrence	In the county of Greenup, on the second Monday in March, June, September, and December.
Greenup	In the county of Lewis, on the second Monday in March, June, September, and December.
Lewis	In the county of Fayette, on the first Monday in March, June, September, and December.
Fayette	In the county of Madison, on the first Monday in February, May, August, and November.
Madison	In the county of Woodford, on the third Monday in February, May, August, and November.
Woodford	In the county of Franklin, on such days in the months of March, June, September, and December, as the presiding judge may designate.
Franklin	In the county of Clarke, on the second Monday in January, April, July, and October.
Clarke	In the county of Estill, on the first Monday in January, April, July, and October.
Estill	In the county of Jessamine, on the first Monday in February, May, August, and November.
Jessamine	In the county of Rockcastle, on the first Monday in January, April, July, and October.
Rockcastle	In the county of Laurel, on the third Monday in February, May, August, and November.
Laurel	In the county of Whitley, on the second Monday in January, April, July, and October.
Whitley	In the county of Knox, on the first Monday in January, April, July, and October.
Knox	In the county of Owsley, on the second Monday in January, April, July, and October.
Owsley	In the county of Clay, on the second Monday in February, May, August, and November.
Clay	In the county of Harlan, on the fourth Monday in March, June, September, and December.
Harlan	In the county of Perry, on the first Monday in March, June, September, and December.
Perry	In the county of Letcher, on the second Monday in March, June, September, and December.
Letcher	In the county of Pike, on the third Monday in March, June, September, and December.
Pike	In the county of Floyd, on the second Monday in January, April, July, and October.
Floyd	In the county of Johnson, on the fourth Monday in January, April, July, and October.
Johnson	In the county of Breathitt, on the first Monday in March, June, September, and December.
Breathitt	§ 2. That all original process issued by the said presiding judge for trial at the above named courts, shall be directed to the sheriff or any constable of the county.
Process may be directed to sheriff or constable.	

§ 3. That said judge shall have concurrent jurisdiction with the circuit courts of this commonwealth in all sums in equity, from five pounds to fifty dollars inclusive; and concurrent jurisdiction with justices of the peace and circuit courts in all actions of trespass and trespass on the case, and writs of replevin, when the damages complained of do not exceed one hundred dollars, except where the title or boundary of lands may be in controversy: *Provided*, that this section shall not apply to Jefferson county.

1851.
Jurisdiction
extended.

§ 4. That said judge shall be and remain under the same liabilities and penalties for illegal charges that are, by law, now imposed upon justices of the peace.

Penalties for
illegal charges.

§ 5. That the courts above mentioned shall continue until the business thereof be completed; and that when, by this act, the said court is to be held on the same day that the county courts are now held by law, the said judge shall first complete the business of the county court.

Continuance
of said court.

Approved March 24, 1851.

CHAPTER 629.

AN ACT to establish an additional Election Precinct in Scott county.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the justices' and constable's district of Scott county, which includes the town of Georgetown, be and the same is hereby divided into two voting precincts, by the Lexington and Cincinnati road, and main cross street in the town of Georgetown, except that the district which lies west of said road and street, shall extend across main cross street in said town so as to include the office of the county court clerk in said west district, and the voting place for said west district shall be at said office; and the voting place for the east district shall be at the court house of said county.

Approved March 24, 1851.

CHAPTER 636.

AN ACT to change the Magistrates' and Constables' Districts in Carter county.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the magistrates' and constable's districts in Carter county be so changed, as to include John Sparks, James Boggs, and Philip Johnson, in district No. 4.

Approved March 24, 1851.

1851.

CHAPTER 637.

AN ACT for the appropriation of money.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the following sums of money, not otherwise appropriated, be paid out of the public treasury to the several persons named, and entitled to the same, viz :

1. To the speakers of the senate and house of representatives, six dollars per day, each, during the present session.

2. To the clerks of the senate and house of representatives, ten dollars per day, each, during the present session.

3. To the sergeant-at-arms of the senate and house of representatives, four dollars per day, each, during the present session.

4. To the door-keepers of the senate and house of representatives, four dollars each, per day, during the present session.

5. To the clerks of the senate and house of representatives, sixty dollars each, for their services after the close of the session, in preparing the acts for publication, and arranging the books and papers for safe keeping.

6. To the assistant clerks of the senate and house of representatives, seven dollars per day, each, during the present session.

7. To the Baptist church, for the use of their bell during the present session, ten dollars.

8. To the publishers of the Daily Commonwealth, for the use of their paper during the present session, three hundred dollars.

9. To the publishers of the Yeoman paper, for the use of that paper during the present session, one hundred and fifty dollars.

10. To the lunatic asylum, at Lexington, for the support of that institution, twenty-six thousand dollars—sixteen thousand seven hundred and fifty dollars of the amount payable on the passage of this act, and the balance quarterly, in advance. The commissioners are required by this act to make all contracts for the necessities of said institution, *cash contracts* ; and the chairman of the board of directors, before he shall receive any part of this appropriation, shall have executed bond, in the office of the clerk of the Fayette county court, with security, to be approved by the clerk, in the full amount of the appropriation of this act, conditioned to the faithful appliance of the same to the use of said asylum.

11. To W. R. Campbell, for the use of the servant of the house of representatives, for making fires, &c., during the present session, sixty five dollars.

12. To W. G. Jones, for the use of the servant of the senate, for making fires, &c., during the present session, one hundred and twenty-three dollars.

Lunatic Asylum at Lexington.

1851.

14. To James R. Watson, for services rendered the committee on finance, five dollars.

15. To Henry Clark and Jacob, servants for the senate and house of representatives, ten dollars each.

16. To A. G. Hodges, for making out index to the journal of the house of representatives, one hundred dollars.

17. To A. G. Hodges, for making out index to journal of the senate, one hundred dollars.

18. To Wm. R. Campbell, for services rendered, five dollars.

19. To Wm. A. Gorham, deputy sergeant house of representatives, for executing writ of election, four dollars.

20. To R. A. Gray, for serving writ of election in Whitley and Logan counties, eighty dollars.

21. To E. H. Tole, for bill of sundries, thirty dollars and fifty cents.

22. To Kentucky penitentiary, for bill of sundries, sixteen dollars and twenty-five cents.

23. To George W. Gwin, for bill of sundries, one dollar and twenty-five cents.

24. To Baker & Anderson, for bill of sundries, ninety-four dollars and ninety cents.

25. To A. Conery, for repair of clock, six dollars.

26. To James F. Dryden, one pitcher, seventy-five cents.

27. To Gray & George, sundries, two dollars.

28. To John P. Cammack, bill of coffin, &c., for Colonel R. M. Johnson, one hundred dollars.

29. To John P. Cammack, bill of sundries, forty-nine dollars and ninety-five cents.

30. To John P. Cammack, bill of coffin, &c., for John F. Todd, one hundred and two dollars and forty cents.

31. To Baker & Anderson, for bill of sundries, fifteen dollars and seventy cents.

32. To Wm. A. Gorham, for serving writs of election in Bracken and Harrison counties, eighteen dollars.

33. To William Veach, bill of sundries, two dollars and fifty cents.

34. To William Veach, for bill of sundries, thirty-three dollars and thirty cents.

35. To Joyce & Walston, for bill of sundries, forty-one dollars and thirty cents.

36. To G. W. Walston, for bill of sundries, forty-one dollars and seventy-six cents.

37. To Cumberland Hospital, twenty-five hundred and thirty-five dollars.

38. To Doxon & Graham, for sundries, thirty-three dollars and twenty-five cents.

39. To George W. Gwin, for sundries, five dollars and twenty cents.

40. For one additional clerk to the house of representatives, five and a half days, at three dollars per day.

1851.

41. For one additional clerk to the house of representatives, five days, at two dollars and fifty cents per day.

42. To Ben. Hardin, jr., one dollar and fifty cents per day, for his services as assistant sergeant in the house of representatives.

43. To John B. Arnold and William A. Hoskins, expenses of contested election, to be equally divided between them, two hundred dollars.

44. That the second auditor shall pay the orders of the clerks of each house, in favor of such assistant clerks as they may employ for engrossing and enrolling bills: *Provided*, that the allowances made above to the two additional clerks in the house of representatives, shall be excepted from this item.

45. To Revs. S. Robinson, G. W. Smiley, J. Lancaster, J. Warder, B. Mills, and John N. Norton, twenty dollars each, for services in opening the sessions of the two houses, respectively, with prayer.

46. To Clifton Anderson, twenty dollars, for services rendered the senate.

Approved March 24, 1851.

CHAPTER 640.

AN ACT in relation to certain Magistrates' Districts in Garrard, Nicholas, Taylor, and Pendleton counties.

District No. 2
in Garrard.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That the boundary of district No. 2, in Garrard county, be so changed as to include John T. Leavel within said district; and that the third district, in said county, be so changed as to include Elsy D. Storms.

Voting place
in district No. 6,
in Nicholas co.,
may be changed
by county court.

And may change
boundary of dis-
trict No. 1.

§ 2. That the county court of Nicholas county—a majority of the justices being on the bench—may, at its next April term, make an order changing the place of voting in the 6th justices' district of said county, from its present location, at the house of Robert West, Esq., to the house of Andrew W. Shrout, at Buzzard Roost. And said court may, at the same term, make an order adding the following boundary to the 1st district of said county, viz: beginning at the mouth of Elk creek on Licking river; thence up said river to the mouth of Buchanan creek; thence up said creek to the Fleming county line; thence with said line to the line of said 1st district; thence with the line of said district to the beginning. Said court may, also, make an order changing the line between the 5th and 6th districts, so as to transfer the house of A. W. Blair to said 6th district. Said court is vested with a discretionary power to make or refuse any or all of said changes; and in making or refusing the same, shall hear and consider all petitions, remonstrances, or other evidence, for or against the same, which may be brought before it.

§ 3. That the lines between magistrates' districts Nos. 3 and 5, in Taylor county, be so changed as to include James Hill, Ro. Hill, and Washington Hill within the 3d district.

1851.

Districts Nos. 3 & 5 in Taylor.

§ 4. That the voting place in the 7th magistrates' district in Pendleton county be changed from the house of Reuben L. Coleman's to the house of J. W. Humes, in the town of Callensville; and it shall be the duty of the secretary of state to forward a copy of this section to the clerk of the Pendleton county court for record.

Voting place in district No. 7 in Pendleton.

Approved March 24, 1851.

CHAPTER 644.

AN ACT to authorize Constables in Louisville, and in certain districts in certain counties, to appoint deputies.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky,* That the constables to be elected by the people in the city of Louisville shall have power and authority, respectively, to appoint deputies, not exceeding one for each district of the justices of the peace in said city, who shall be approved by the county court of Jefferson county, and shall be qualified, by taking in said court the same oath that the constables are required to take, before they enter upon the duties of their offices; and each constable shall be responsible for the official acts of his deputy.

Constables in Louisville may appoint deputies

§ 2. The provisions of this act shall extend to the constables in the Burksville district, in Cumberland county; of districts Nos. 1 and 3, in Wayne county, and of district No. 1 in Pulaski county, except that the deputy to be appointed by each of said constables shall be approved of by the county court of said counties respectively, and be qualified, by taking in said court the same oath that constables are required to take, before entering upon the duties of said office.

This act extended to Burksville district in Cumberland co. and Nos. 1 & 3 in Wayne county.

Approved March 24, 1851.

CHAPTER 645.

AN ACT concerning free negroes and mulattoes.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky,* That it shall be the duty of the assessors of tax in each county of this commonwealth, in the year one thousand eight hundred and fifty-two, to ascertain and make due return thereof, of the name, age, sex, and color, whether black or mulatto, of each and every free negro and mulatto within each county; and the clerk of the county court shall make, within a book to be kept for that purpose, a full and complete register from the as-

Assessors of tax to make return of all free negroes and mulattoes in each county.

Clerk of each county court to keep a register of them.

1851.

Clerk shall summon every free negro & mulatto to appear before county court to exhibit their papers, &c.

The evidence produced shall be recorded, &c.

Copy to be given to the party.

Penalty for failing to comply with the provisions of this act, & proceedings thereon.

sessors' books, of all such free negroes and mulattoes so ascertained and returned, which shall be open at all times to any and all persons desiring access thereto.

§ 2. That it shall be the duty of the clerk of the county court of each county in this commonwealth, within the month of July, 1852, to issue a summons in the name of the commonwealth, directed to the sheriff of his county, commanding each and every free negro and mulatto by his or her name, within his county, who, if a male, shall be over the age of twenty-one and under the age of fifty years, and if a female, over the age of eighteen and under the age of forty-five years, to appear before the judge of the county court at the next term thereof, if the process be served ten days before the court, and to exhibit their freedom papers before said court, if any they have; and if they have no freedom papers, to produce such evidence as they can that he or she was free-born; and the judge shall, thereupon, cause to be recorded by the clerk in said book all such as shall appear before said court in obedience to such process, together with a description of the individual so appearing, including the name, age, sex, color, height, and visible marks upon his or her face, head, or hands, as well as a statement when and by whom he or she was emancipated, or, if free-born, where he or she was born, and who were his or her parents; and said clerk shall also make out a true and complete copy of said record, accompanied with the seal of his office, and attested with his signature; and shall deliver such copy or certificate, so made out, to the person whose description it purports to be; and upon the delivery of said certificate by the clerk, to the person entitled thereto, he or she shall pay the sum of two dollars, of which the sum of fifty cents shall be retained by the clerk for his fees, and fifty cents to be paid over by him to the sheriff for his services, and the balance shall be accounted for and paid over by him in the same manner and under the same regulations that he is by law required to account for and pay over tax on seals and deeds; but no tax for annexing the county seal shall be demanded: *Provided*, that not more than one certificate of freedom shall be issued to the same person, until the former is returned and destroyed by the clerk.

§ 3. That if any free negro or mulatto, being duly served with process as aforesaid, shall fail to appear before court within the time specified, and comply with the requisitions of this act, it shall be the duty of said county court to direct an attachment to issue against said free negro or mulatto so failing to appear, returnable to the next term of said court, to show cause, if any he or she can, why he or she shall not be fined for such failure; and said court, upon the return of said attachment executed, shall try said information in a summary manner, by the intervention of

a jury, who may find said free negro or mulatto guilty, and assess a fine against him, her, or them, in any sum not exceeding ten dollars each; and thereupon, said court shall render judgment for the amount of said fine and the cost of the prosecution, and the clerk shall, within ten days after the adjournment of said court, issue a *capias profine* for the amount of said fine and cost, against such free negro or mulatto, by the authority of which the sheriff of the county, to whom the same shall be directed, shall, unless the same be paid, take such free negro or mulatto into his possession, and shall, at the next county court, proceed to hire out such free negro or mulatto to such person as will pay the amount of said execution for the shortest time of service; and the sheriff shall deliver such free negro or mulatto to the person so hiring, and shall take bond with good surety, to secure the payment of said hire, within three months, payable to the commonwealth of Kentucky, which bond shall have the force and effect of a replevin bond, and shall make return of said *capias profine*, together with said bond, to the clerk of his county, within ten days after such hiring; and when said bond shall fall due, the clerk shall issue an execution thereon, directed to the sheriff of the county where the obligors to said bond reside, for the amount thereof; and the said sheriff shall collect the same and pay it over to said clerk, and take his receipt therefor; and said clerk shall account for and pay over the same, in the same manner and under the same regulations as he is directed to account for and pay over tax on seals and deeds; and the hirer shall also enter into bond, with good surety, payable to the commonwealth of Kentucky, in the penalty of one thousand dollars, conditioned that he will not remove such free negro or mulatto without the bounds of the county where such hiring shall have taken place, during the term of service, and that he will treat such free negro or mulatto with humanity, and feed and clothe him well.

§ 4. The money thus collected and paid over by the clerks of this commonwealth shall be forever set apart and applied in aid of such free negroes and mulattoes as shall hereafter voluntarily emigrate from this state to Liberia—each emigrant to be entitled to receive therefrom the sum of fifty dollars, upon his or her producing to the auditor of public accounts a certificate, with the county seal annexed, from the clerk of the county court of the county in which such free negro or mulatto resides, stating that such free negro or mulatto is an actual resident of his county, and has executed bond with good surety, in double the amount to be drawn from the treasury, conditioned that he or she will, without delay, emigrate to Liberia, and never after return and settle in this state; and the auditor shall issue his warrant for the same, which shall be paid by the treasurer out of the fund aforesaid, and no other.

Money collected under this act to form a colonization fund.

LAWS OF KENTUCKY.

the assessor shall be allowed the sum of five free negro or mulatto listed and returned by
oks.

any free negro or mulatto shall pass his or
ate aforesaid to any person of color, whether that
be free or slave, for purposes in contravention of
as act, or to aid and assist any slave or slaves in escaping
from the service of his or her owner or owners, such free
negro and mulatto shall be deemed guilty of felony, and
shall, upon indictment by a grand jury, and upon convic-
tion thereof before a jury of the country, be sentenced by
the court before whom the trial be had, to undergo confine-
ment at hard labor in the jail and penitentiary house of
this commonwealth, for a period of not less than three nor
more than eight years.

Penalty on a
free negro or mu-
latto removing
to this state.

§ 7. That if any free negro or mulatto now residing
without the limits of this state, and hereafter moving to and
settling in this state, or any free negro or mulatto now re-
siding within this state, and having left and settled without
the limits of this state, and shall return and settle again
within the limits of this state, such free negro or mulatto
shall be deemed guilty of felony, and shall, upon indictment
by a grand jury, and upon conviction thereof before a jury of
the country, be sentenced by the court before whom the trial
shall be had, to undergo confinement at hard labor in the
jail and penitentiary house of this commonwealth, for a
period of not less than two nor more than five years.

How a repeti-
tion of the of-
fense punished.

§ 8. Persons convicted under the seventh section of this
act, after they have served the time of confinement in the
penitentiary, or after they may have been pardoned, who fail
to leave, but remain in this state for a period of thirty days,
shall be guilty of felony, and punished by confinement in
the penitentiary for a period not less than five nor more
than ten years for each offense.

Free negroes
or mulattoes
not allowed in
future to become
the owners of
any slave, ex-
cept for certain
purposes.

§ 9. That hereafter, no free negro or mulatto shall pur-
chase or otherwise become the owner of any slave or slaves,
in this state, unless for the purpose of carrying such slave
or slaves without the bounds of this state; and any property
or slave acquired contrary to this section, shall be forfeited
to the commonwealth without office found, and shall be
sold, under the direction of the court, and the proceeds of
sale shall form a part of the fund as created by the fourth
section of this act.

Approved March 24, 1851.

CHAPTER 651.

1851.

AN ACT requiring officers of this commonwealth to execute official bonds, and prescribing the manner of such execution.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky,* That all the clerks, sheriffs, surveyors, coroners, constables, jailers, and assessors, hereafter elected by the people, before entering upon the duties of their respective offices, shall each execute the official bond or bonds, with approved sureties, in the mode and manner, for the amounts, and subject to the conditions of the official bonds now by law respectively required of such officers.

Certain officers to execute bonds before entering on duties of office.

§ 2. The auditor of public accounts, to be elected in August next, before entering upon the duties of his office, shall execute such official bond as is now required by law of the second auditor; to be executed in the same manner, for the same amount, with like sureties, and subject to the same conditions as the bond now required of the second auditor.

Auditor to execute bond.

§ 3. The treasurer and register of the land office, hereafter elected by the people, and every officer of a district or county, or for the state at large, so elected, before entering upon the duties of their respective offices, shall each execute bond or bonds now required by law of such officers respectively, with like sureties, in the same amount, and subject to the same conditions.

Treasurer and Register.

§ 4. If the official bond is not given, and the oath of office taken, within one month from the time when the officer was elected or appointed and received a certificate thereof, and a commission, where a commission is necessary, or from the time his election or appointment ought to take effect, such office shall be deemed vacant.

If not executed within one month the office to be declared vacant.

§ 5. If any officer, who, having executed bond and entered on the duties of his office, shall thereafter fail and refuse to execute any other official bond required by law, his office shall be deemed vacant, and shall be filled as any other vacancy of such office.

Further regulations as to offices deemed vacant.

§ 6. This act shall apply to all officers hereafter elected at regular elections, from whom bonds are required by law to be executed, and to all officers elected or appointed to fill any vacancy in any of said offices.

Applicable to all officers from whom bonds are required.

Approved March 24, 1851.

CHAPTER 652.

AN ACT to establish an additional election precinct in Jefferson county.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That an additional election precinct, to be known as precinct No. 11, is hereby established in the county of Jefferson, to be included in the following boundary, to-wit: beginning at the mouth of Cane run; thence up that

1851.

creek to the Jefferson county line; thence with said line to Floyd's fork; thence with that stream to the beginning. The place of voting in said precinct shall be at the house of John Pound.

Approved March 24, 1851.

CHAPTER 655.

AN ACT relating to Assessors of Tax.

Assessors elect-
ed in May shall
enter on their
duties 10th Jan-
uary, 1852.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That the assessors to be elected by the people in May next, under the constitution, shall not enter upon the discharge of their official duties, as such, until the tenth day of January, 1852; on or before which time they shall qualify and enter into bond before the county court, under the rules and regulations now prescribed by law.

Assessors elect-
ed by county
courts shall dis-
charge duties
thereof for 1851.

§ 2. That assessors elected by the county courts for the year 1851, shall discharge all the duties of assessors for that year, in the mode and manner heretofore prescribed by laws prescribing the duties of assessors of tax, and subject to the same responsibilities.

Approved March 24, 1851.

CHAPTER 656.

AN ACT to change the place of voting in Jamestown; in Campbell county.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the place of voting in the town of Jamestown, in Campbell county, be changed from the school house in said town to the Jamestown hotel.

Approved March 24, 1851.

CHAPTER 658.

AN ACT to authorize the Mayor and Council of the city of Louisville to provide for the times, places, and manner of holding the first election in 1851, under the charter of said city.

Whereas, the charter of the city of Louisville, enacted at the present session of the general assembly, goes into operation on the day on which the first municipal election of city officers thereunder will occur, and there is a necessity that provision should be made by the present mayor and council of said city for holding said elections. Therefore,

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the present mayor and council of the city of Louisville shall, at least six days before the elections provided for in the charter of the city of Louisville above recited, prescribe by ordinance the times and places of hold-

ing the first municipal elections under said charter, the officers by whom the same shall be holden, and make all necessary rules and regulations therefor.

1851.

Approved March 24, 1851.

CHAPTER 662.

AN ACT repealing all laws authorizing allowances to clerks and sheriffs for *ex officio* services.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That from and after the passage of this act, all laws authorizing allowance for *ex officio* services to be made out of the public treasury or the county levy, to clerks of courts and sheriffs, shall be and the same are hereby repealed.

Approved March 24, 1851.

CHAPTER 664.

AN ACT to establish two additional election precincts in Bullitt county.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That two additional election precincts are hereby established in the county of Bullitt, the dividing line of the first of which shall commence at the mouth of Bullitt's Lick creek, on the north side of Salt river, running thence in a straight line to the top of the ridge near Cubias' knob; thence with said ridge to the Jefferson county line, to include all the voters residing in said county west of said line; and the place of voting in said precinct is hereby established at the house of Wm. Green.

Two additional precincts established in Bullitt

§ 2. That the dividing line of the second election precinct shall commence at Long Lick bridge; thence with the Lee's ferry road to the Rolling fork, including all voters to the west of said line; the place of voting in which is established at the house of Wm. Warren, in Pittstown.

Line of 2d district changed.

Voting place changed.

Approved March 24, 1851.

CHAPTER 669.

AN ACT to prevent slaves emancipated from remaining in the State.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That if any slave by the laws of this state, shall fail or refuse to leave the state for three months after having been emancipated, or, having left the state, shall return and settle within the state, or remain in the state for a longer period than thirty days, such person shall be deemed guilty of felony, and, upon conviction, confined in the penitentiary for any period not more than one year.

Penalty on any slave emancipated remaining in this state.

1851.

Such offenses
declared a felony
—further punish-
ment.

§ 2. Persons guilty of either of the offenses set forth in this act, after they have served their time of confinement in the penitentiary, or after they may have been pardoned, who fail to leave, but remain in this state for a period of thirty days, shall be deemed guilty of felony, and, upon conviction, be confined in the penitentiary for a period of not less than five nor more than ten years, for each offense.

How to be tried.

§ 3. Persons guilty of offenses denounced in this act shall be apprehended and tried, as is provided for in other cases of felony.

Approved March 24, 1851.

CHAPTER 670.

AN ACT organizing the Department of the Auditor of Public Accounts, and fixing the salaries of the officers of said department.

Duties of 1st
and 2d auditor
to be performed
by the auditor
public accounts.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That any law establishing the office of second auditor is hereby repealed, and all the duties now required to be performed by the first and second auditors shall be performed and discharged by the auditor of public accounts to be elected in August next, under the provisions of the constitution, and subject to the responsibilities, in like cases, applicable to the first and second auditors, respectively, as now prescribed by law.

Auditor's salary

Clerk hire.

§ 2. That the auditor elected under the provisions of the constitution be allowed a salary of two thousand dollars per annum, to be paid quarterly, and that said auditor be allowed two thousand eight hundred dollars per annum for clerk hire.

When act to go
into effect.

To execute bond

§ 3. This act shall go into effect as soon as the auditor of public accounts, to be elected in August next, shall have qualified and entered upon the discharge of his official duties as such: but before the auditor shall enter upon the duties of his office, as prescribed by this act, he shall execute bond to the commonwealth of Kentucky, in the penalty of seventy-five thousand dollars, with good security, approved by the governor, and conditioned for the faithful discharge of said duties.

Approved March 24, 1851.

CHAPTER 671.

AN ACT to abolish the General Court, and transfer its powers and jurisdiction to the Franklin Circuit Court.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That the general court is hereby abolished.

1851.

Duty of clerk of general court.

§ 2. The clerk of the general court shall, within twenty days after the passage of this act, deliver to the clerk of the Franklin county court, all the books containing records of deeds and other conveyances and original deeds which may be in the office of the general court. And the clerk of the general court shall, at the same time, deliver to the clerk of the Franklin circuit court, all the books, papers, records, and things belonging to his office—excepting those herein directed to be delivered to the clerk of the Franklin county court.

Franklin circuit court to determine all cases now pending before gen. court.

§ 3. The Franklin circuit court shall have the same power to hear and determine all cases now pending in the general court and enforce all judgments and decrees heretofore rendered by it, as the general court would have had if this act had not been passed. And copies of records and other papers of the general court transferred to the Franklin circuit court, may be made by the clerk of the latter court, and, when certified by him, shall have the same effect in all courts of justice and elsewhere that they would have had if certified by the clerk of the general court.

Clerk of Franklin county court to certify copies of deeds delivered him.

§ 4. The clerk of the Franklin county court may make and certify copies of any deeds or other writings transferred from the general court to the Franklin county court, and such copies shall have the same force and effect as if made from the proper records of said county court.

Writes now pending returnable to Franklin circuit court.

§ 5. All writs and other process that have been issued returnable to the next term of the general court, shall be returned to the Franklin circuit court; and the Franklin circuit court shall have the same power to enforce them as the general court would have had if this act had not been passed.

§ 6. The office of sergeant of the general court is hereby abolished.

Powers of general court transferred to Franklin circuit court.

§ 7. The jurisdiction and powers heretofore vested in the general court to hear and determine any suit, action, or motion, in the name of the commonwealth, are hereby vested in the Franklin circuit court, with full power to hear and determine all cases now pending on the docket of the general court, or which may hereafter be instituted in the Franklin circuit court. And hereafter, it shall be the duty of the attorney general to institute all motions, suits, and actions for the recovery of money or property, claimed by the commonwealth, in the Franklin circuit court.

Duty of attorney general.

§ 8. Process in suits or motions in the name of the commonwealth, instituted in the Franklin circuit court, shall be directed to the sheriff of the proper county, and by him executed and returned.

How process to be served.

§ 9. The judge of the Franklin circuit court shall hold a special term the last Monday of January of each year, to hear and determine all suits and motions which may be brought or made against defaulting public officers, and ren-

Special terms of Franklin circuit court to be held.

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der judgments thereon in the same manner as heretofore done by the general court. No business shall be transacted at the special term except in civil cases in which the commonwealth is a party or interested, and said term may continue six days if the business requires it.

Further regulations.

§ 10. Hereafter motions against defaulting public officers may be made the first day of the special term; but if from any cause they are not made on that day, they may be made the second or third day of said term. Nothing herein shall be construed to prevent the commonwealth from instituting suits in said court at any other term thereof.

Approved March 24, 1851.

CHAPTER 672.

AN ACT to provide means to meet the casual deficit in the Treasury.

Whereas, it appears that on account of the appropriation of \$35,000 to pay the liabilities contracted by the commissioners of the second lunatic asylum, and the unusual length of the present session of the general assembly, there will be a casual deficit in the treasury to meet the current expenses of the present fiscal year of between \$45,000 and \$50,000. Therefore,

Governor to borrow \$50,000, for not longer than five years.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That the governor be and he is hereby directed, in the name and for and on behalf of the state of Kentucky, to borrow of any of the banks of the state of Kentucky, or of any individuals or corporations, such sum or sums as may be actually necessary to meet the charges upon the treasury, not exceeding, in the aggregate, the sum of fifty thousand dollars, at a rate of interest not exceeding six per cent. per annum; which interest shall be payable semi-annually out of the treasury, and for a period of time not exceeding five years, and subject to be paid off and discharged at any time the condition of the treasury may justify such payment: which sum or sums of money, when so borrowed, shall be audited by the second auditor, and paid into the treasury for the purpose of meeting the deficit aforesaid.

Bonds to be issued.

§ 2. That with a view to enable the governor to effect such loan, he is hereby vested with full power and authority to issue the bond or bonds of the state in such form and manner as will meet the terms upon which such loan is directed to be made, as expressed in this act.

Whenever the state of treasury will justify, governor to pay off the sum borrowed, or any part thereof.

§ 3. That for the purpose of paying off and finally discharging the debt of the state created under the provisions of this act, the governor be authorised, and it is hereby made his duty, at any time when the condition of the treasury will justify the same, to issue an order upon the auditor directing him to draw his warrant upon the treasury in

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behalf of any person or persons, corporation or corporations holding the said bonds, or any portion thereof: *Provided*, that the bonds of the state so held, shall, upon such payment, be surrendered to the treasurer for the amount paid, and by him burned in the presence of the governor and auditor; and the statement of the amount and date of such burning shall be entered upon the records of said treasury office, signed by the governor, auditor, and treasurer: *Provided*, if the governor cannot effect the loan provided for by this act, he shall be authorized to allow to sheriffs at the rate of six per centum per annum for any revenue advanced by them, from the time of advancement until the regular time of payment.

Approved March 24, 1851.

CHAPTER 674.

AN ACT concerning the books and records of Justices of the Peace.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That it shall be the duty of each justice of the peace in the several counties in this commonwealth, who may be in commission in May, 1851, when justices of the peace shall be elected, on or before the second Monday in June thereafter, to deliver to the clerk of the county court of their counties, respectively, all record books, papers, and law books—to-wit: the digests of the statute laws, and the session acts—which may be in their possession by virtue of their office; and after that time, all justices of the peace, when their term of office shall expire, shall, in like manner, deliver all such books, papers, and records, to the clerk of the county court of their counties, respectively, within ten days after their term of office shall expire: *Provided*, that if any justice of the peace shall be re-elected, he shall retain his said books, papers, and records.

Justices of the peace now in commission to deliver records, &c., to county court clerk.

§ 2. If any person shall depart this life, whilst he holds the office of justice of the peace, or before he shall have delivered his books, papers, and records, to the clerk of the county court of his county, as required by the preceding section, it shall be the duty of his executor or administrator, in like manner, to deliver said books, papers, and records, within thirty days after his qualification as such.

Administrator or executor of deceased justice to deliver his records, &c., to the county court clerk.

§ 3. If any person shall fail to comply with the preceding sections of this act, it shall be the duty of the county court to enter a rule against such delinquent, requiring him to appear at such term as said court shall think proper, and show cause why he shall not be compelled to deliver such books, papers, and records; and upon the return of such order executed, the court shall examine into the case, and compel said delinquent to deliver the same to the clerk of

How a failure to comply with this act shall be enforced.

Proceedings

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Duty of county attorney.

said court, by process of attachment and imprisonment, until he shall comply with the provisions of this act; and if it shall appear, upon the hearing of any such cause, that such delinquent failed without sufficient excuse to deliver said books, papers, and records, the said court shall render judgment against him for any sum not less than five nor more than ten dollars, and the costs of said proceeding; and there shall, in every such judgment, be taxed an attorney's fee of five dollars, as part of the costs for the county attorney, if he shall attend to said cause. It is hereby made the duty of the several county attorneys to see that the provisions of this act are complied with, and to institute proceedings against all such as shall fail to comply with its provisions. All fines collected under this act shall be paid into the hands of the sheriff, and go to the reduction of the county levy.

Duty of presiding judge, when records are delivered.

§ 4. When said books, papers, and records, shall have been delivered to the clerk, the county court, or the judge thereof in vacation, shall have full power to order the same, or any part thereof, to be by said clerk delivered to such other justice or justices of the peace as he may deem proper; and when said papers and records shall have been delivered to any justice of the peace, in pursuance of any such order, they shall be, to all intents and purposes, deemed and held as his official papers and records, and he shall have the same power to certify copies thereof, to adjudicate upon any undetermined cause pending thereon, and to issue any process thereon, that the justice of the peace by whom they were delivered over would have had if he had continued the legal custodian thereof: *Provided*, that if the judge shall make an order for the delivery of such books, papers, and records, in vacation, it shall be in writing, signed by the judge, directed to the clerk, and by him be recorded in the order book of said court as a part of the proceedings of the next term; and the original shall be filed in his office: *And provided, also*, that in all cases, upon delivering any books, papers, or records, to any justice of the peace, the clerk shall take from such justice a receipt therefor, and file it in his office.

All officers to deliver to successors official records, &c.

§ 5. That it shall be the duty of all the other officers of this commonwealth, whose successor is to be elected in May next, to surrender to their said successors, when they shall have been duly qualified as required by law, all law books, record books, papers, and other documents belonging to said office.

Presiding judge to have certain law books.

§ 6. That when the law books held by justices of the peace are surrendered, if it shall appear there is not enough in any county to furnish the judge of the county court with a copy of the statutes and session acts from the year 1842-3, inclusive, it shall be the duty of said court to have an entry of the fact made on the record book, and upon production

of a copy of said order to the secretary of state, he shall furnish a copy of said laws to such county court judge, if to be had.

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§ 7. It shall be the duty of the secretary of state to furnish to said presiding judge of the county court, for the use of his office, one copy of the decisions of the court of appeals of Kentucky, hereafter published.

Decisions of court of appeals also.

Approved March 24, 1851.

CHAPTER 676.

AN ACT regulating proceedings against officers.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky,* That if any judge of a county court, justice of the peace, sheriff, coroner, surveyor, jailer, county assessor, attorney for the county, or constable, shall be guilty of malseasance or misfeasance in office, or willful neglect in the discharge of his official duty, he shall be subject to indictment by a grand jury of the county in which he may reside, and on conviction thereof, by a petit jury in the circuit court in which the indictment shall be found, his office shall become vacant, and the court shall so decree it: *Provided, however,* that such officer and the commonwealth shall have the right to appeal from such decree to the court of appeals, within the time and in the mode prescribed by law in civil cases; and if the officer shall appeal, he shall execute bond, in a penalty and with surety to be approved of and prescribed by the court, conditioned to pay all such costs as the commonwealth may incur in the event the decree of the circuit court be affirmed by the court of appeals.

Officers subject to indictment for malseasance in office.

Right of appeal granted.

§ 2. That it shall be the duty of the clerk of the said circuit court to make out and certify to the court of appeals a transcript of the record of the case, as other cases are made out and certified by him, for which he shall charge the officer praying the appeal the fees allowed by law for making out records; but the clerk shall have no right to charge the commonwealth any fee in the case.

Duty of circuit court clerk in appeals.

§ 3. That the decree of the circuit court declaring the office vacant, shall be suspended until it shall be affirmed by the court of appeals, and its mandate filed in the circuit court.

§ 4. That in all cases where the office shall be deemed vacant, and where the decree vacating it shall not be reversed, the officer shall pay the costs of the proceeding, for which execution shall be ordered by the court, and be issued by the clerk.

Costs, how paid

Approved March 24, 1851.

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CHAPTER 680.

AN ACT to provide for the organization of the Militia of this State.

Sections and
parts of sections
repealed and a-
mended.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That an act, entitled, an act to amend the militia law, approved February 26, 1849, be and the same is hereby repealed, to take effect on the first day of January, 1852; and the act, entitled, an act to amend the militia law, approved February 9, 1837, be amended as follows: The following sections and parts of sections of said act are hereby repealed, viz: so much of the third section as requires a majority of the field officers and captains in each regiment to meet and nominate platoon officers; so much of the fourteenth section as allows the adjutant general a salary of two hundred and fifty dollars; the proviso to the forty-ninth section; and so much of the seventy-first section as requires major generals and brigadier generals to recommend or nominate the next officer in rank to fill a vacancy.

What officers
the governor
may appoint.

§ 2. The governor and commander-in-chief shall appoint the adjutant general, and his other staff officers; the major generals, brigadier generals, and commandants of regiments shall, respectively, appoint their staff officers; and commandants of companies shall appoint their non-commissioned officers.

Officers, how
to be elected.

§ 3. All militia officers, whose appointments are not herein otherwise provided for, shall be elected by persons subject to militia duty, within their respective companies, regiments, brigades, and divisions, under the following rules and regulations: A captain, a first lieutenant, and second lieutenant, by those subject to militia duty in the bounds of each company; whose term of service shall be four years after the first election. A colonel, lieutenant colonel, and major, by those subject to militia duty in the bounds of each regiment; whose terms, after the first election, shall be four years. A brigadier general, by those subject to militia duty in the regiments composing each brigade; whose term, after the first election, shall be six years; and a major general, by those subject to militia duty in the regiments embraced in each division.

Sheriff to hold
elections for mi-
litia officers.

§ 4. It is hereby made the duty of the sheriffs of the several counties, by themselves or deputies, to attend the musters of the regiment or regiments in their respective counties, who, together with the field officers of the same, shall superintend the election of the several officers directed by this act; and within ten days thereafter he shall forward to the governor, directed to the adjutant general, the names of those, written in a plain legible hand, who received the highest number of votes for the various offices respectively—except the brigadier general or major general; and in those cases, he shall forward the number of votes received by each individual for those offices respectively.

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Commissions
to be issued to
those elected.

§ 5. Upon the receipt of the returns made by the sheriffs, as provided for in the preceding section, commissions shall be issued therefor by the governor—first adding up the lists of votes returned from the several regiments for brigadier generals and major generals, and issuing commissions in each case to him who receives the greatest number of votes—and in all cases where two or more persons receive the highest and an equal number of votes for the same office, it shall be determined by lot, in the presence of him or them who superintend the election, if below the rank of a brigadier general; and in the event of a tie in the vote for brigadier general and major general, it shall be determined by lot, in the presence of such persons as the governor shall select. And the commissions thus issued for officers elected in June next, shall take effect from the 31st day of January, 1852, and to expire when their successors are elected and commissioned, for the terms as specified in this act. When vacancies occur in any of the offices of the militia made elective by this act, or in the absence of any officer, the next in rank shall discharge all the duties required by this act of his superior during such vacancy.

Times and
places of elec-
tions.

§ 6. After the first election directed by this act to be holden in June next, the regular elections shall be held as follows: The company officers shall be severally elected on the days, and at the places where the company musters are held; and the major general, brigadier general, colonel, lieutenant colonel, and major, shall be elected on the days, and at the places where the regimental musters are held; and after the first election of officers, the officers of companies shall superintend the election of company officers, and the regimental officers shall superintend the elections of the different officers who are to be elected at the regimental musters: *Provided*, that the regular elections for successors to the brigadier generals and major generals, first provided for in this act, shall take place at the regimental musters in the year 1857: *And, provided further*, as vacancies occur, elections shall be held to fill the unexpired term at the next succeeding company or regimental muster, as the case may require.

Volunteers.

§ 7. In all calls for volunteers, either by the general or state government, the necessary officers shall be chosen as required by this act and the constitution of this state.

§ 8. All laws or parts of laws coming within the provisions of this act be and the same are hereby repealed.

Approved March 24, 1851.

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CHAPTER 681.

AN ACT regulating the terms of the Muhlenburg and Hancock Circuit Courts.

Hancock circuit court, when to commence.

Muhlenburg circuit court, when to commence.

Spring terms of said courts not changed by this act.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the circuit courts in the county of Hancock shall hereafter commence on the last Monday in August, and on the last Monday in February, and continue, at each term, six juridical days, if the business of said court require it; and that the circuit court in Muhlenburg county shall commence on the third Monday in March, and on the third Monday in September, and continue in session six juridical days, if the business of said court shall require it. And so much of an act, passed at the present session of the general assembly, as fixes a different day for holding the circuit court in either of said counties, is hereby repealed: *Provided,* that nothing in this act shall be so construed as to change the time of holding the spring terms of the circuit court in either of said counties in the year 1851.

Approved March 24, 1851.

CHAPTER 683.

AN ACT to provide for a special Court of Appeals.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That if, on the trial of any cause which may at any time be pending in the court of appeals, a majority of the judges cannot sit on account of interest in the event of the cause, or on account of the relationship to either of the parties litigant, or on account of having been employed as counsel in the case in the court below, or for any other good cause, it shall be the duty of the court to select a competent and impartial lawyer or lawyers, or judge or judges of the circuit court, to constitute a special court, with such of the judges of the court of appeals as can sit, for the trial of such cause or causes; and such special court shall commence its session for the trial and determination of any such suit or suits at the time fixed by the court of appeals, and may adjourn from time to time, until the business before them has been disposed of. And such lawyers and circuit judges, so selected, shall be entitled to five dollars for each and every day they may serve in said special court; and their claims shall be certified by the court of appeals to the auditor of public accounts, who shall issue his warrant on the treasurer for said amounts.

Approved March 24, 1851.

CHAPTER 684.

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AN ACT giving officers further time to collect taxes and fees.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That all officers shall have the further time of six months, from the passage of this act, to collect all taxes and fees, to them delivered or due, before the expiration of their respective offices, subject to the same liabilities, restrictions, and responsibilities, as are now imposed by law in such cases, and as though they were due, delivered, or collected before the expiration of their offices.

Approved March 24, 1851.

CHAPTER 690.

AN ACT to increase the powers of administrators with the will annexed.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That where conditional provisions and discretionary powers are reposed in the executor or executors, who, from any cause, do not qualify, the administrator with the will annexed may, on filing his petition in the court having jurisdiction thereof, making all persons interested parties to the suit, have a decree rendered appointing the said administrator with the will annexed, or a commissioner or commissioners, in the discretion of the court, to carry into effect the aforesaid powers and provisions.

Approved March 24, 1851.

CHAPTER 693.

AN ACT to authorize the Circuit Courts of this Commonwealth to direct the sale of the real estate of lunatics.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky,* That it shall hereafter be lawful for the committee of any lunatic, within this commonwealth, to file a petition in chancery, in any county in which said lunatic may be, or in any county in which any land or slaves of such lunatic may be, praying the sale of any part, or the whole of such lunatic's real estate or slaves.

The committee may file a petition.

§ 2. That if the judge or chancellor, in whose court said petition may be filed, shall be of the opinion that it is necessary for the payment of the debts of such lunatic, or that it would be advantageous to such lunatic to have any part, or the whole of such lunatic's real estate or slaves sold, such court is hereby authorized and empowered to make any order or decree for that purpose: *Provided,* the children and wife, if any, of said lunatic, shall be made defendants to said petition.

The judge may decree a sale.

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Bond to be
executed before
decree of sale.

§ 3. That before any sale shall be made under the provisions of this act, the court making the order or decree for such sale, shall require the committee of such lunatic to enter into bond, with good security, to be approved of by such court, in a penalty double the value of the property ordered or decreed to be sold, and conditioned to make such disposition of the proceeds of such sale as the court may, from time to time, direct; said bond shall be made payable to the commonwealth of Kentucky, and suit may be brought on the same at any time, and by any person who may have been injured by any act or omission of said committee.

Petition to be
sworn to.

§ 4. That the judge of said circuit or chancery court shall require said petition to be sworn to by said committee, and, on due proof of the allegations thereof by depositions or oral proof heard in open court, he may render the decree of sale authorized by the second section of this act; but nothing herein contained shall prohibit the court from decreeing a sale of the land or negroes of such lunatic, as heretofore, for the payment of his or her debts.

Approved March 24, 1851.

CHAPTER 696.

AN ACT to change the boundary lines of districts Nos. 1 and 2, in Mercer county.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the boundary lines of magistrates' and constables' districts Nos. 1 and 2, be changed as follows: beginning at the northeast corner of district No. 1, and thence running with the dividing ridge until it intersects the line established by the Legislature at its present session, so as to allow the voters in said boundary to vote at Harrodsburg, instead of at the voting place in district No. 2, as now required by law.

Approved March 24, 1851.

CHAPTER 697.

AN ACT in relation to the fees of Commonwealth's Attorneys.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the fees of the attorneys for the commonwealth to be chosen at the next election, shall be what are now the perquisites and fees of office of the attorneys for the commonwealth under the present and existing laws.

Approved March 24, 1851.

CHAPTER 701.

1851.

AN ACT to authorize the sale of the estates of infants and *femes covert*.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That it shall be lawful for the circuit court to order or decree the sale of the real estate and slaves of infants and *femes covert*, or of any interest they may have therein, whether it be a present or future interest, or in whatever manner derived, if it shall appear to said court proper to do so, upon the application of the guardian or next friend of an infant, or the husband or next friend of a *feme covert*, by petition sworn to, setting forth the estate or interest of which the sale is desired, and that a sale of the same would redound to the interest of such infant or *feme covert*: *Provided*, That no sale of the estate of a *feme covert* shall be made, unless she shall file an answer to the petition of her husband or next friend, consenting to said sale, and shall acknowledge the same on privy examination before said court. The court may authorize and require the investment of the proceeds of said sale, either in or out of this state, in such manner as shall appear to the court to be safe and profitable, and most to the interest of said infant or *feme covert*. Before the money arising from such sale is paid over to the guardian or next friend of an infant, or husband or next friend of a *feme covert*, the court shall require bond, with good security, in at least double the amount to be secured, for the faithful performance of the orders and decrees of said court. All persons having an interest in said estate, or its sale, shall be made parties to the petition; and when the estate has been devised by will, or conveyed by deed of trust, the donor, if living, and the trustee, if any, shall be made parties to the petition. The court shall make all orders necessary to the proper making of said sale, and the conveyance to the purchaser of the title to the estate, sold under the provisions of this act; and, to that end, may appoint one or more commissioners for such purpose.

Petition may be filed.

Proceeds of sale how to be invested.

Bond to be executed.

Who to be made parties to petition.

§ 2. That it shall be lawful for the circuit court, upon the petition of an executor or administrator of any estate, to decree a sale of any slave or slaves, belonging to the estate of which the petitioner is executor or administrator, as are ungovernable, of a vicious character, or in danger of running away, if the court should be of opinion, from the proof in the cause, that such sale would redound to the interest of said estate; and the money arising from any such sale shall be paid to and distributed by said executor or administrator as other estate of the decedent in his hands: *Provided*, that before a sale is ordered under the provisions of this section, the court shall require the executor or administrator to execute bond, with good security, and in adequate penalty, conditioned for the faithful distribution of the money arising from said sale according to law.

Court may decree sale of slaves.

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Court may decree the sale of the life estate in land or slaves.

§ 3. That it shall be lawful for a circuit court, on the petition of any person holding a life interest in a slave or land, to decree a sale of such slave or land, and an equitable distribution of the proceeds thereof between such tenant for life and the holder of the estate, reversionary or in remainder, in such slave or land, upon allegation and proof that a sale of such land would redound to the permanent advantage of the title holders of said land, or that it would be the interest of all the owners of said slave that such sale and division should be made on account of the insubordinate and refractory disposition of said slave, or from a well-grounded apprehension of the tenant for life that such slave intends to run away and escape to a non-slaveholding state; and the petitioner shall make oath to the allegations of the petition; and the proof of the allegations of any petition filed under this act, shall be by depositions, or by witnesses heard in open court; and all persons interested in said slave or land shall be made parties to said suit. The court shall have discretionary power to re-invest the proceeds of such sale of land or slaves in other land in or out of this state, or slaves, upon such terms and conditions as are prescribed in the first section of this act; but no sale of land or slaves shall be decreed under any of the provisions of this act, if, in the opinion of the court, such sale would be in contravention of the will or deed under which said land or slave may be held.

Sales to be made at the court house door

§ 4. That all sales made under the provisions of this act, shall be made at the door of the court house of the county where the estate or property sold shall be, unless otherwise directed by the court, at public auction to the highest bidder, on a court day, upon such terms, credits, and conditions, as the court shall prescribe.

Approved March 24, 1851.

CHAPTER 703.

AN ACT to authorise the Judge of the Scott Circuit Court to sign certain records.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That it shall and may be lawful for the judge of the Scott circuit court to sign the orders and records of the Scott court, made at the last February term of said court; and all orders, judgments, decrees, and records of said court, when so signed, shall be, in all respects, as legal and valid as if signed during the term.

Approved March 24, 1851.

CHAPTER 710.

1851.

AN ACT to fix the salaries of certain officers.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That the various officers of this commonwealth, from and after their first election or appointment, under the present constitution, shall be paid out of the public treasury the following salaries, viz: To the governor, two thousand five hundred dollars; to the secretary of state, seven hundred and fifty dollars; to the attorney general, three hundred dollars; to the treasurer, one thousand seven hundred dollars; to the librarian and keeper of the state house and public grounds, four hundred dollars; to the register of the land office, one thousand two hundred and fifty dollars; to the adjutant general, one hundred and fifty dollars; to the quartermaster general, one hundred dollars; to the clerk of the secretary's office, six hundred and sixty six dollars; to the first clerk in the land office, six hundred dollars; to the second clerk in the land office, five hundred dollars; to the judges of the court of appeals, each, fifteen hundred dollars; to the judges of the circuit court, each, fourteen hundred dollars; to the chancellor of Louisville, fifteen hundred dollars; to the several attorneys for the commonwealth, each, three hundred dollars—which sums shall be paid out of the treasury quarterly.

§ 2. That from and after the present session of the general assembly, the officers of each branch of the general assembly of the commonwealth of Kentucky shall be paid out of the public treasury the following sums, viz: to the principal clerks in the senate and house of representatives, each, seven dollars per day; to the second clerk in each branch, six dollars per day; to the doorkeeper of each branch, three dollars per day; and to the sergeant-at-arms of each branch, three dollars per day.

§ 3. That any law now in force allowing a salary to a clerk in the treasurer's department, be and the same is hereby repealed: *Provided*, that this section shall not be considered in force until the treasurer, to be elected in August next, shall be installed.

§ 4. That the sum of one hundred dollars be allowed the secretary of state for additional clerk hire for the present year.

Approved March 24, 1851.

CHAPTER 712.

AN ACT more effectually to protect the rights of persons holding an interest in slaves in reversion or remainder.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That if any person or persons, owning a life estate or other interest in a slave or slaves, to which any

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other person or persons may be entitled in reversion or remainder, shall remove or voluntarily permit to be removed out of this commonwealth, such slave or slaves, or any of their increase, without the consent of him or her holding the reversion or interest in remainder in said slaves, such person shall forfeit all and every such slave or slaves, and all right and title he, she, or they may have had thereon, to the person or persons owning the reversion or interest in remainder in said slave or slaves.

Approved March 24, 1851.

CHAPTER 713.

AN ACT concerning the establishment of Ferries.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That where the owner or owners of land lying on one or both sides of a stream over which it is proposed to establish a ferry are non-residents of this state, and have no agent upon whom notice can be served, it shall be the duty of the party or parties who wish to establish said ferry, to have a notice of such intention published for three consecutive months in the nearest authorized newspaper; and a copy of such printed notice, with the publisher's affidavit made before the proper officer, that it was published for three consecutive months accompanying it, shall be filed in the county court clerk's office where the application is made, and shall be considered a sufficient notice.

Approved March 24, 1851.

CHAPTER 715.

AN ACT to change the place of voting in the fifth justices' district in the county of Owen.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky,* That a special election shall be held in district No. 5, in the county of Owen, at which the sense of the qualified voters of said district shall be taken as to whether the place of voting in said district shall remain at the town of Gratz, or be removed to some other place of the district; and that a poll be opened for each proposed place in said district.

Election to be held in district No. 5.

§ 2. Said election shall be held at the town of Gratz by the sheriff and other election officers to be appointed for the purpose of holding the elections in May next, at such time as the sheriff may designate.

How to be conducted.

§ 3. It shall be the duty of the sheriff to designate and advertise the time of holding said election, by written advertisement at three or more public places of the district, for at least ten days before the said election, cause the same

Notice of said election to be given.

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to be held, fill the vacancy of any election officer who may fail to attend, and cause a poll to be opened for each proposed voting place in the said district, and certify the result to the next county court of Owen county.

§ 4. After the election the court shall proceed, in the usual manner, to change the place of voting to that point in the district, in favor of which the greatest number of legal votes shall have been cast, and thereafter elections in said district shall be held at the place selected.

Court to fix the voting place according to the result of said election.

§ 5. In holding said election, the several election officers thereof shall be governed by the rules and regulations, and be subject to the responsibilities prescribed by the general election laws, so far as the same are applicable.

Officers holding said election to be governed by the general election law.

Approved March 24, 1851.

CHAPTER 723.

AN ACT regulating the terms of the Clarke and Madison County Courts.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That the Clarke county court shall hold a term in each month of the year, to commence on the fourth Monday of the month, except that in the month of April and October said terms shall commence on the third Monday of the month; and said court shall sit at each of said terms six juridical days, if the business thereof shall require it.

Clarke county court to hold a term on the 4th Mondays in every month except April and October, when it shall be on 3d Monday.

§ 2. That the Madison county court shall hold a term in each month of the year, to commence on the first Monday of the month, and continue six juridical days, if the business of said court shall require it: *Provided*, that this act shall not take effect until the first day of May next.

Madison county court to hold a term on the 1st Monday in every month.

Approved March 24, 1851.

CHAPTER 725.

AN ACT to authorize the County Court of Woodford to establish an election precinct and voting place.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the county court of Woodford county be and is hereby authorized (if said court shall deem it necessary,) to establish a voting place at Clifton, in district No. 2, in said county, and establish the boundary of the election precinct in which said voting place may be established; and if such election precinct and voting place be established by said court, the clerk thereof shall certify a copy of the boundaries and place of voting, and the order of court establishing the same, to the secretary of state.

Approved March 24, 1851.

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CHAPTER 726.

AN ACT to alter District No. 2, in Pike county.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the boundaries of district No. 2, in Pike county, be so changed as to include the residence of John Clay, in district No. 2.

Approved March 24, 1851.

CHAPTER 731.

AN ACT to abolish the office of Secretary of the Board of Internal Improvement, and to change the organization of said Board.

Office of secretary of board abolished.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky, That so much of the act, entitled, an act to amend the law establishing the board of internal improvement, approved March 3, 1842, as authorizes the appointment of a secretary of said board, at an annual salary of five hundred dollars, shall be and the same is hereby repealed; and the said office of secretary of said board is hereby abolished.*

Who to act as secretary of the board.

§ 2. That the first auditor of public accounts shall, *ex officio*, perform the duties of secretary of said board until the first day of September, one thousand eight hundred and fifty-one, and thereafter the auditor of public accounts, for the time being, shall, *ex officio*, perform said duties.

Approved March 24, 1851.

CHAPTER 733.

AN ACT to amend the charter of the Southern Bank of Kentucky.

Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the Southern bank and branches shall have the privilege of issuing notes of less denomination than five dollars, but not less than one dollar; and that said bank shall, on the first day of July in each year, pay into the treasury an annual tax of fifty cents on each one hundred dollars of stock paid in, which shall go in aid of the sinking fund.

Approved March 24, 1851.

RESOLUTIONS.

No. 1.

RESOLUTION to appoint a Committee to visit the Deaf and Dumb Asylum at Danville.

1850.

Resolved by the General Assembly of the Commonwealth of Kentucky, That a committee of three on the part of the senate, and five on the part of the house of representatives, be appointed to visit the deaf and dumb asylum at Danville.

Approved November 18, 1850.

No. 2.

RESOLUTION to postpone the day for the election of Commissioners to revise the statutes, and simplify the rules of practice.

Resolved by the General Assembly of the Commonwealth of Kentucky, That the election of three persons learned in the law to codify the laws of this state, and for the election of three persons to simplify the rules of practice, fixed by joint resolution for this day, be postponed until Wednesday the 25th inst.

Approved November 18, 1850.

No. 3.

RESOLUTION to appoint a committee to visit the Institution of the Blind, and Marine Hospital.

Resolved by the General Assembly of the Commonwealth of Kentucky, That a committee of three from the house of representatives and two from the senate, be appointed to visit the blind asylum, and marine hospital at Louisville.

Approved November 18, 1850.

No. 4.

RESOLUTION to appoint a committee to visit the Lunatic Asylum.

Resolved by the General Assembly of the Commonwealth of Kentucky, That a committee of five on the part of the house and three upon the part of the senate, be appointed to visit and examine the condition of the lunatic asylum at Lexington, and report thereon.

Approved November 18, 1850.

RESOLUTIONS.

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No. 5.

RESOLUTION to instruct the committee on the Library to inquire whether or not there be a State Librarian.

Resolved by the General Assembly of the Commonwealth of Kentucky, That the committee on the library be instructed to inquire into the present condition of the state library, and report whether or not there be in office at this time a state librarian; and what action, if any, they deem necessary in the premises.

Approved November 18, 1850.

No 6.

RESOLUTION authorizing the purchase of one hundred and fifty copies of a lithographed skeleton map of the State of Kentucky.

Resolved by the General Assembly of the Commonwealth of Kentucky, That the secretary of state be authorized to procure for the general assembly, one hundred and fifty copies of a lithographed skeleton map of the state of Kentucky, presenting the outlines of the counties and rivers of the state, with the number of qualified voters in each county: *Provided,* they can be furnished for a sum not exceeding fifty dollars.

Approved November 18, 1850.

No. 7.

RESOLUTIONS in relation to the action of the Indiana Convention concerning the death of Col. Richard M. Johnson.

Resolved, That the general assembly of Kentucky do appreciate the kind and patriotic feelings which prompted the members of the convention of the state of Indiana to condole with Kentucky in the loss which she has sustained in the death of our fellow citizen, Col. Richard M. Johnson, and feel that their resolutions are another proof that "republics are not always ungrateful."

Resolved, That a committee of three on the part of the senate, and five on the part of the house of representatives, be appointed to communicate with the governor of Indiana, acknowledging the receipt of the foregoing resolutions, and transmitting a copy of these resolutions.

Approved December 7, 1850.

No, 8.

RESOLUTION inviting the Rev. B. J. Breckinridge to deliver an address on Education and Common Schools.

Resolved by the General Assembly of the Commonwealth of Kentucky, That the Rev. R. J. Breckinridge, superintendent of public instruction, be requested to deliver an address on

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Tuesday evening next, the 10th of December, at 7 o'clock, in the hall of the house of representatives, upon the subject of education and common schools.

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Approved December 7, 1850.

No. 9.

Resolution directing an examination into the condition of Transylvania University.

Resolved by the General Assembly of the Commonwealth of Kentucky; That the committee appointed by the senate and house of representatives, to visit the lunatic asylum at Lexington, be directed to visit and examine the condition and prospects of transylvania university; and report the same to this house.

Approved December 7, 1850.

No. 10.

Resolution in relation to the funeral discourse delivered on the death of Col. Richard M. Johnson.

Resolved by the General Assembly of the Commonwealth of Kentucky, That a joint committee of three on the part of the house of representatives and two on the part of the senate, be appointed to communicate with the Rev. Stuart Robinson, and request of him, for publication, a copy of the funeral discourse delivered by him on the 20th inst., on the occasion of the death of Col. Richard M. Johnson; and that said committee tender to him the thanks of the general assembly, for the able manner in which he discharged the duties devolving upon him on that occasion.

Approved December 7, 1850.

No. 11.

A Resolution to add Benjamin L. Owens to the committee to visit the Lunatic Asylum.

Resolved by the General Assembly of the Commonwealth of Kentucky, That Benjamin L. Owens be added to the joint committee to visit the lunatic asylum at Lexington.

Approved December 9, 1850.

No. 12.

A Resolution in regard to a law of Congress, granting bounty lands to certain officers and soldiers.

Whereas, the late law of Congress, granting bounty lands to certain officers and soldiers, who have been engaged in

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the military service of the United States, has been construed to give but one warrant to any soldier, though he may have performed sundry tours of duty in the manner specified in said act; and whereas, the certificates, or warrants, which may issue to the soldier under said act, have been decided not to be assignable. Therefore,

Resolved by the General Assembly of the Commonwealth of Kentucky, That each officer and soldier should receive bounty land for each distinct term of service he may have performed, in such quantity as is given by said act for any such term of duty; and that any act of Congress, giving land in proportion to the duration of any single tour, without at the same time extending the bounty to any and all other tours of duty, which may have been performed by the officer or soldier, results in manifest injustice and inequality.

Resolved; That it would greatly redound to the interest, convenience, and benefit of said officers and soldiers, to allow them to sell and assign their certificates, or warrants, at any time after they shall issue.

Resolved, That our senators and representatives in congress be requested to use their best efforts and influence for such modifications of said law as will accomplish the above objects; and that copies of these resolutions be sent to each of them by the Governor.

Approved December 9, 1850.

No. 13.

RESOLUTION to appoint a committee to inquire into the expediency of removing the Seat of Government to Louisville, or some other place.

Resolved by the General Assembly of the Commonwealth of Kentucky, That a committee of five on the part of the house of representatives and three on the part of the senate, be appointed, whose duty it shall be to inquire into the expediency of removing the seat of government from Frankfort to Louisville, or some other place, and to inquire by correspondence, or otherwise, as to the terms which can be made for the removal of the same to said city of Louisville, or some other place, and what would be the cost, or charges, to the commonwealth of Kentucky.

Approved December 16, 1850.

No. 14.

A RESOLUTION calling on the clerk of the Court of Appeals for the amount of his fees.

Resolved by the General Assembly of the Commonwealth of Kentucky, That the clerk of the court of appeals be and he is hereby requested to furnish, for the information of the general assembly, a full and complete report of the gross

amount of his fees per annum for the last five years ; and, also, the net amount of said fees for the same time, after deducting the amount paid to his assistants, &c.

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Approved December 16, 1850.

No. 15.

RESOLUTION authorizing the Second Auditor to issue warrants for the pay of the officers of the General Assembly.

Resolved by the General Assembly of the Commonwealth of Kentucky, That it shall be lawful for the second auditor to draw a warrant on the treasury in favor of the clerk and assistant clerk of the senate and house of representatives ; also, in favor of the door-keeper and sergeant-at-arms of each house, for any amount they or each of them may require : *Provided,* said warrant shall not exceed in amount their per diem allowance, as heretofore prescribed by law, up to the time of issuing said warrant.

Approved December 21, 1850.

No. 16.

RESOLUTION requesting the Governor to cause salutes to be fired on the 8th of January and 22d of February next.

Resolved by the General Assembly of the Commonwealth of Kentucky, That the governor be requested to order a salute of thirty-one guns to be fired on the 8th instant, in honor of the victory gained by the American army under major general Jackson against the British under general Pakenham on the 8th of January, 1815 ; also, the same number of guns to be fired on the 22d day of February next, in honor of the birth day of general Washington, and of the victory obtained by the American army under general Taylor at Buena Vista, in which the Kentucky troops bore a conspicuous and efficient part.

Approved January 8, 1851.

No. 17.

RESOLUTION fixing a day for the election of public officers.

Resolved by the General Assembly of the Commonwealth of Kentucky, That they will, on Wednesday the 15th day of January, 1851, proceed by a joint vote of both houses to the election of the public officers of this state.

Approved January 15, 1851.

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No. 18.

RESOLUTION to add Camden M. Ballard, and others, to the committee to visit the Institution for the Blind, and Marine Hospital.

Resolved by the General Assembly of the Commonwealth of Kentucky, That Camden M. Ballard, Alvin Duvall, and Ambrose H. Talbott, be added to the joint committee appointed to visit the blind institution, and marine hospital, at Louisville.

Approved January 21, 1851.

No. 19.

RESOLUTION of instruction to the committee on Banks.

1. *Resolved by the General Assembly of the Commonwealth of Kentucky,* That the committee on Banks open a correspondence with the bank of Kentucky, the northern bank, the bank of Louisville, the southern bank, and the farmers bank, in writing, putting to the president and directors of said banks such questions as, in their judgment, may be necessary to be answered to ascertain the true condition of said banks; also, such interrogatories as they may deem necessary to ascertain whether or not said banks have acted within the powers granted them by their respective charters; and that said correspondence shall supersede the necessity of visiting said banks; and that the whole of the correspondence between said committee and the president and directors of the said banks, be by them reported to the general assembly.

2. *Resolved,* That the committees on the lunatic asylum, deaf and dumb asylum, and institution for the blind, and marine hospital, be also instructed to open correspondence with those institutions upon the subject of their condition and prosperity, for the information of the general assembly; and that said correspondence shall supersede the necessity of visiting said institutions in person.

Approved January 21, 1851.

No. 20.

RESOLUTION authorizing the publication and distribution of the General Laws.

Resolved by the General Assembly of the Commonwealth of Kentucky, That the public printer be and he is hereby directed and required to print a sufficient number of copies of the general laws, in pamphlet form, (the revised statutes and code of practice excepted,) passed during the present session of the legislature, for distribution at the earliest practicable period; and the secretary of state is hereby required to distribute them forthwith—one to each member and officer of the general assembly; one to each of the

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executive officers in Frankfort; one to each judge of the county court; one to each judge of the circuit court; one to each judge of the court of appeals, and one to each commonwealth's attorney.

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Approved March 24, 1851.

No. 21.

RESOLUTION for printing the Code of Practice.

Resolved by the General Assembly of the Commonwealth of Kentucky, That the public printer be directed to print four hundred and fifty-four copies of the code of practice, in a separate pamphlet form, to be distributed as follows: one copy to each county and circuit judge, one to each judge of the court of appeals, one to each member of the legislature, and one copy to each clerk of the county and circuit courts.

Approved March 24, 1851.

No. 22.

A RESOLUTION directing the printing of the act, entitled, an act to amend the Militia Law, and prescribing certain duties of the Adjutant General.

Resolved by the General Assembly of the Commonwealth of Kentucky, That the public printer is hereby directed to print three hundred copies of an act passed at the present session, entitled, an act to amend the militia law, and deliver the same to the adjutant general, whose duty it shall be to forward, by mail, one copy of the same to the sheriff of each county, and one to each major general, brigadier general, and to each commander of regiments.

Approved March 24, 1851.

No. 23.

RESOLUTION to furnish the members and officers of the General Assembly with the debates of the Convention.

Resolved by the General Assembly of the Commonwealth of Kentucky, That the secretary of state be and he is hereby directed to furnish each member and officer of the general assembly with one copy of the revised debates of the convention, now in his hands and subject to the disposal of the legislature: *Provided*, that the members and officers of the general assembly, who have been heretofore provided for, shall not be entitled to the benefit of this resolution.

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No. 24.

PREAMBLE AND RESOLUTION requesting the Governor to inter the remains of certain persons in the Frankfort Cemetery.

Whereas it is represented to the General Assembly, that in the month of Sept., 1848, Col. Edward Brooks, acting under the authorities of the town of Monroe and state of Michigan, transported and delivered to the mayor of the city of Covington the remains of fifteen of Kentucky's gallant volunteers, who fell in the memorable battle of the river Raisin on the 22nd of January, 1813, and which were, by the authorities of the city of Covington, deposited in the vault of the Baptist Cemetery in that city. Therefore,

Resolved by the General Assembly of the Commonwealth of Kentucky, That his excellency the governor of Kentucky be requested to cause the said remains to be removed to the city of Frankfort, and suitably interred in the grounds of the Frankfort Cemetery.

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CONSTITUTION

OF THE

COMMONWEALTH OF KENTUCKY.

PUBLISHED BY ORDER OF THE GENERAL ASSEMBLY.

PREAMBLE.

WE, the representatives of the people of the State of Kentucky, in Convention assembled, to secure to all the citizens thereof the enjoyment of the rights of life, liberty, and property, and of pursuing happiness, do ordain and establish this Constitution for its government.

Preamble.

ARTICLE FIRST.

Concerning the distribution of the powers of Government.

SECTION 1. The powers of the Government of the State of Kentucky shall be divided into three distinct departments, and each of them be confided to a separate body of magistracy, to-wit: those which are Legislative to one; those which are Executive to another; and those which are Judiciary to another.

Division of the powers of government into three departments.

SECTION 2. No person, or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

Powers to be kept separate.

ARTICLE SECOND.

Concerning the Legislative Department.

SECTION 1. The Legislative power shall be vested in a House of Representatives and Senate, which together shall

Of the legislative power.

CONSTITUTION OF KENTUCKY.

be styled the General Assembly of the Commonwealth of Kentucky.

House of representatives--term of service of members.

SECTION 2. The members of the House of Representatives shall continue in service for the term of two years from the day of the general election, and no longer.

When to be chosen, & how.

SECTION 3. Representatives shall be chosen on the first Monday in August, in every second year; and the mode of holding the elections shall be regulated by law.

Qualifications of members.

SECTION 4. No person shall be a Representative, who, at the time of his election, is not a citizen of the United States, has not attained the age of twenty-four years, and who has not resided in this State two years next preceding his election, and the last year thereof in the county, town, or city, for which he may be chosen.

Places of election.

SECTION 5. The General Assembly shall divide each county of this Commonwealth into convenient election precincts, or may delegate power to do so to such county authorities as may be designated by law; and elections for representatives for the several counties shall be held at the places of holding their respective courts, and in the several election precincts into which the counties may be divided: *Provided*, that when it shall appear to the General Assembly that any city or town hath a number of qualified voters equal to the ratio then fixed, such city or town shall be invested with the privilege of a separate representation, in either or both houses of the General Assembly, which shall be retained so long as such city or town shall contain a number of qualified voters equal to the ratio which may, from time to time, be fixed by law; and, thereafter, elections for the county in which such city or town is situated, shall not be held therein; but such city or town shall not be entitled to a separate representation, unless such county, after the separation, shall also be entitled to one or more Representatives. That whenever a city or town shall be entitled to a separate representation in either house of the General Assembly, and by its numbers shall be entitled to more than one Representative, such city or town shall be divided, by squares which are contiguous, so as to make the most compact form, into Representative Districts, as nearly equal as may be, equal to the number of Representatives to which such city or town may be entitled; and one Representative shall be elected from each district. In like manner shall said city or town be divided into Sena-

Cities and towns may have separate representation.

How cities & towns to be divided when entitled to more than one representative.

CONSTITUTION OF KENTUCKY.

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torial Districts, when, by the apportionment, more than one Senator shall be allotted to such city or town; and a Senator shall be elected from each Senatorial District; but no ward or municipal division shall be divided by such division of Senatorial or Representative Districts, unless it be necessary to equalize the Elective, Senatorial, or Representative Districts.

SECTION 6. Representation shall be equal and uniform in this Commonwealth, and shall be forever regulated and ascertained by the number of qualified voters therein. In the year 1850, again in the year 1857, and every eighth year thereafter, an enumeration of all the qualified voters of the State shall be made; and to secure uniformity and equality of representation, the State is hereby laid off into ten districts. The first district shall be composed of the counties of Fulton, Hickman, Ballard, McCracken, Graves, Callo-way, Marshall, Livingston, Crittenden, Union, Hopkins, Caldwell, and Trigg. The second district shall be composed of the counties of Christian, Muhlenburg, Henderson, Daviess, Hancock, Ohio, Breckinridge, Meade, Grayson, Butler, and Edmonson. The third district shall be composed of the counties of Todd, Logan, Simpson, Warren, Allen, Monroe, Barren, and Hart. The fourth district shall be composed of the counties of Cumberland, Adair, Green, Taylor, Clinton, Russell, Wayne, Pulaski, Casey, Boyle, and Lincoln. The fifth district shall be composed of the counties of Hardin, Larue, Bullitt, Spencer, Nelson, Washington, Marion, Mercer, and Anderson. The sixth district shall be composed of the counties of Garrard, Madison, Estill, Owsley, Rockcastle, Laurel, Clay, Whitley, Knox, Harlan, Perry, Letcher, Pike, Floyd, and Johnson. The seventh district shall be composed of the counties of Jefferson, Oldham, Trimble, Carroll, Henry, and Shelby, and the city of Louisville. The eighth district shall be composed of the counties of Bourbon, Fayette, Scott, Owen, Franklin, Woodford, and Jessamine. The ninth district shall be composed of the counties of Clarke, Bath, Montgomery, Fleming, Lewis, Greenup, Carter, Lawrence, Morgan, and Breathitt. The tenth district shall be composed of the counties of Mason, Bracken, Nicholas, Harrison, Pendleton, Campbell, Grant, Kenton, Boone, and Gallatin. The number of Representatives shall, at the several sessions of the General Assembly, next after the making of

Apportionment
of representa-
tion.

CONSTITUTION OF KENTUCKY.

the enumerations, be apportioned among the ten several districts, according to the number of qualified voters in each; and the Representatives shall be apportioned as near as may be, among the counties, towns and cities in each district; and in making such apportionment the following rules shall govern, to-wit: Every county, town or city having the ratio shall have one Representative; if double the ratio, two Representatives, and so on. Next, the counties, towns or cities having one or more Representatives, and the largest number of qualified voters above the ratio, and counties having the largest number under the ratio shall have a Representative, regard being always had to the greatest number of qualified voters: *Provided*, that when a county may not have a sufficient number of qualified voters to entitle it to one Representative, then such county may be joined to some adjacent county or counties, which counties shall send one Representative. When a new county shall be formed of territory belonging to more than one district, it shall form a part of that district having the least number of qualified voters.

When new counties are formed, where to be attached.

To choose its officers.

SECTION 7. The House of Representatives shall choose its Speaker and other officers.

Qualifications of electors of representatives.

SECTION 8. Every free white male citizen, of the age of twenty-one years, who has resided in the State two years, or in the county, town, or city, in which he offers to vote, one year next preceding the election, shall be a voter; but such voter shall have been, for sixty days next preceding the election, a resident of the precinct in which he offers to vote, and he shall vote in said precinct, and not elsewhere.

Electors, when exempt from arrest.

SECTION 9. Voters, in all cases except treason, felony, breach or surety of the peace, shall be privileged from arrest during their attendance at, going to, and returning from elections.

Term of service of senators.

SECTION 10. Senators shall be chosen for the term of four years, and the Senate shall have power to choose its officers biennially.

Senators and representatives to be elected in 1851.

SECTION 11. Senators and Representatives shall be elected, under the first apportionment after the adoption of this Constitution, in the year 1851.

Senators to be classed.

SECTION 12. At the session of the General Assembly next after the first apportionment under this Constitution, the Senators shall be divided by lot, as equally as may be, into two classes; the seats of the first class shall be vacated at

the end of two years from the day of the election, and those of the second class at the end of four years, so that one half shall be chosen every two years.

SECTION 13. The number of Representatives shall be one hundred, and the number of Senators thirty-eight.

Number of representatives and senators.

SECTION 14. At every apportionment of representation, the State shall be laid off into thirty eight Senatorial Districts, which shall be so formed as to contain, as near as may be, an equal number of qualified voters, and so that no county shall be divided in the formation of a Senatorial district, except such county shall be entitled, under the enumeration, to two or more Senators; and where two or more counties compose a district they shall be adjoining.

Senatorial districts, how to be formed.

SECTION 15. One Senator for each district shall be elected by the qualified voters therein, who shall vote in the precincts where they reside, at the places where elections are by law directed to be held.

Qualifications of electors of senators.

SECTION 16. No person shall be a Senator who, at the time of his election, is not a citizen of the United States; has not attained the age of thirty years, and who has not resided in this State six years next preceding his election; and the last year thereof in the district for which he may be chosen.

Qualification of senators.

SECTION 17. The election for Senators, next after the first apportionment under this Constitution, shall be general throughout the State, and at the same time that the election for Representatives is held, and thereafter there shall be a biennial election for Senators to fill the places of those whose term of service may have expired.

Time of electing senators.

SECTION 18. The General Assembly shall convene on the first Monday in November, after the adoption of this Constitution, and again on the first Monday in November, 1851, and on the same day of every second year thereafter, unless a different day be appointed by law; and their sessions shall be held at the seat of government.

Time of the meeting of the legislature.

SECTION 19. Not less than a majority of the members of each house of the General Assembly shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and shall be authorized by law to compel the attendance of absent members in such manner and under such penalties as may be prescribed thereby.

Quorum of the senate and house

SECTION 20. Each house of the General Assembly shall judge of the qualifications, elections, and returns of its

Elections—how judged.

CONSTITUTION OF KENTUCKY.

members; but a contested election shall be determined in such manner as shall be directed by law.

Rules of proceedings, and power to punish

SECTION 21. Each house of the General Assembly may determine the rules of its proceedings, punish a member for disorderly behavior, and with the concurrence of two-thirds expel a member; but not a second time for the same cause.

Journals by each house.

SECTION 22. Each house of the General Assembly shall keep and publish, weekly, a journal of its proceedings, and the yeas and nays of the members on any question shall, at the desire of any two of them, be entered on their journal.

Adjournment.

SECTION 23. Neither house, during the session of the General Assembly, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

Compensation of members, and length of session

SECTION 24. The members of the General Assembly shall severally receive from the public treasury a compensation for their services, which shall be three dollars a day during their attendance on, and twelve and a half cents per mile for the necessary travel in going to, and returning from, the sessions of their respective houses: *Provided*, that the same may be increased or diminished by law; but no alteration shall take effect during the session at which such alteration shall be made; nor shall a session of the General Assembly continue beyond sixty days, except by a vote of two thirds of all the members elected to each house, but this shall not apply to the first session held under this Constitution.

Privileges of members.

SECTION 25. The members of the General Assembly shall, in all cases except treason, felony, breach or surety of the peace, be privileged from arrest during their attendance at the sessions of their respective houses, and in going to, and returning from, the same; and for any speech or debate in either house, they shall not be questioned in any other place.

To what offices members shall not be appointed

SECTION 26. No Senator or Representative shall, during the term for which he was elected, nor for one year thereafter, be appointed or elected to any civil office of profit under this Commonwealth, which shall have been created, or the emoluments of which shall have been increased, during the said term, except to such offices or appointments as may be filled by the election of the people.

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SECTION 27. No person, while he continues to exercise the functions of a clergyman, priest, or teacher of any religious persuasion, society, or sect, nor while he holds or exercises any office of profit under this Commonwealth, or under the government of the United States, shall be eligible to the General Assembly; except attorneys at law, justices of the peace, and militia officers: *Provided*, that attorneys for the Commonwealth, who receive a fixed annual salary, shall be ineligible.

Who ineligible
to the legislature

SECTION 28. No person who, at any time, may have been a collector of taxes or public moneys for the State, or the assistant or deputy of such collector, shall be eligible to the General Assembly, unless he shall have obtained a quietus six months before the election, for the amount of such collection, and for all public moneys for which he may have been responsible.

Collector of
tax, ineligible
until quietus is
obtained.

SECTION 29. No bill shall have the force of a law, until, on three several days, it be read over in each house of the General Assembly, and free discussion allowed thereon, unless in cases of urgency, four-fifths of the house, where the bill shall be depending, may deem it expedient to dispense with this rule.

Bills—their
formalities.

SECTION 30. All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose amendments, as in other bills: *Provided*, that they shall not introduce any new matter, under color of amendment, which does not relate to raising revenue.

Revenue bills,
where they are
to originate.

SECTION 31. The General Assembly shall regulate, by law, by whom and in what manner writs of election shall be issued to fill the vacancies which may happen in either branch thereof.

Writs of elec-
tion.

SECTION 32. The General Assembly shall have no power to grant divorces, to change the names of individuals, or direct the sales of estates belonging to infants, or other persons laboring under legal disabilities, by special legislation; but by general laws shall confer such powers on the courts of justice.

Shall not grant
divorces, change
names, or direct
sales of infants'
estates, &c.

SECTION 33. The credit of this Commonwealth shall never be given or loaned in aid of any person, association, municipality, or corporation.

Credit of the
state not to be
given or loaned.

SECTION 34. The General Assembly shall have no power to pass laws to diminish the resources of the Sinking Fund, as now established by law, until the debt of the State be

Resources of
the sinking fund
not to be dimin-
ished.

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paid, but may pass laws to increase them; and the whole resources of said fund, from year to year, shall be sacredly set apart and applied to the payment of the interest and principal of the State debt, and to no other use or purpose, until the whole debt of the State is fully paid and satisfied.

For what purposes debts may be contracted by the state.

SECTION 35. The General Assembly may contract debts to meet casual deficits or failures in the revenue, but such debts, direct or contingent, singly or in the aggregate, shall not at any time exceed five hundred thousand dollars; and the moneys arising from loans creating such debts, shall be applied to the purposes for which they were obtained, or to repay such debts: *Provided*, that the State may contract debts to repel invasion, suppress insurrection, or, if hostilities are threatened, provide for the public defense.

Under what circumstances may contract debts on behalf of state.

SECTION 36. No act of the General Assembly shall authorize any debt to be contracted on behalf of the Commonwealth, except for the purposes mentioned in the thirty fifth section of this article, unless provision be made therein to lay and collect an annual tax sufficient to pay the interest stipulated, and to discharge the debt within thirty years; nor shall such act take effect until it shall have been submitted to the people at a general election, and shall have received a majority of all the votes cast for and against it: *Provided*, that the general Assembly may contract debts, by borrowing money to pay any part of the debt of the State, without submission to the people, and without making provision in the act authorising the same for a tax to discharge the debt so contracted, or the interest thereon.

No law shall relate to more than one subject

SECTION 37. No law, enacted by the General Assembly, shall relate to more than one subject, and that shall be expressed in the title.

Changes of venue, how to be provided for.

SECTION 38. The General Assembly shall not change the venue in any criminal or penal prosecution, but shall provide for the same by general laws.

Writs of error in criminal and penal cases.

SECTION 39. The General Assembly may pass laws authorizing writs of error in criminal or penal cases, and regulating the right of challenge of jurors therein.

Appropriation of money to be voted on by yeas and nays

SECTION 40. The General Assembly shall have no power to pass any act, or resolution, for the appropriation of any money, or the creation of any debt, exceeding the sum of one hundred dollars, at any one time, unless the same, on its final passage, shall be voted for by a majority of all the members then elected to each branch of the General As-

CONSTITUTION OF KENTUCKY:

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sembly; and the yeas and nays thereon entered on the journal.

ARTICLE THIRD.

Concerning the Executive Department.

SECTION 1. The Supreme Executive power of the Commonwealth shall be vested in a Chief Magistrate, who shall be styled the Governor of the Commonwealth of Kentucky.

The executive power.

SECTION 2. The Governor shall be elected for the term of four years, by the qualified voters of the State, at the time when, and places where, they shall respectively vote for Representatives. The person having the highest number of votes shall be Governor; but if two or more shall be equal and highest in votes, the election shall be determined by lot, in such manner as the General Assembly may direct.

Governor to be elected for four years.

SECTION 3. The Governor shall be ineligible for the succeeding four years after the expiration of the term for which he shall have been elected.

Ineligible for succeeding four years.

SECTION 4. He shall be at least thirty-five years of age, and a citizen of the United States, and have been an inhabitant of this State at least six years next preceding his election.

Qualifications for governor.

SECTION 5. He shall commence the execution of the duties of his office on the fifth Tuesday succeeding the day of the general election on which he shall have been chosen, and shall continue in the execution thereof until his successor shall have taken the oaths, or affirmations, prescribed by this Constitution.

Commencement and termination of his service.

SECTION 6. No member of Congress, or person holding any office under the United States, or minister of any religious society, shall be eligible to the office of Governor.

Who ineligible

SECTION 7. The Governor shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the term for which he was elected.

Compensation

SECTION 8. He shall be Commander-in-Chief of the army and navy of this Commonwealth, and of the militia thereof, except when they shall be called into the service of the United States; but he shall not command personally in the field, unless advised so to do by a resolution of the General Assembly.

Military powers and restrictions.

SECTION 9. He shall have power to fill vacancies that may occur, by granting commissions, which shall expire when

May fill vacancies.

such vacancies shall have been filled according to the provisions of this Constitution.

Powers of the
governor.

SECTION 10. He shall have power to remit fines and forfeitures, grant reprieves and pardons, except in cases of impeachment. In cases of treason, he shall have power to grant reprieves until the end of the next session of the General Assembly, in which the power of pardoning shall be vested; but he shall have no power to remit the fees of the Clerk, Sheriff, or Commonwealth's Attorney, in penal or criminal cases.

May require in-
formation from
executive offi-
cers.

SECTION 11. He may require information, in writing, from the officers in the executive department, upon any subject relating to the duties of their respective offices.

Shall give in-
formation to the
general assem-
bly.

SECTION 12. He shall, from time to time, give to the General Assembly information of the state of the Commonwealth, and recommend to their consideration such measures as he may deem expedient.

May convene
the general as-
sembly.

SECTION 13. He may, on extraordinary occasions, convene the General Assembly at the seat of government, or at a different place if that should have become, since their last adjournment, dangerous from an enemy, or from contagious disorders; and in case of disagreement between the two houses, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper, not exceeding four months.

General duty.

SECTION 14. He shall take care that the laws be faithfully executed.

Lieutenant
governor, elec-
tion of.

SECTION 15. A Lieutenant Governor shall be chosen at every regular election for Governor, in the same manner, to continue in office for the same time, and possess the same qualifications as the Governor. In voting for Governor and Lieutenant Governor, the electors shall state for whom they vote as Governor, and for whom as Lieutenant Governor.

To be speaker
of the senate.

SECTION 16. He shall, by virtue of his office, be Speaker of the Senate, have a right, when in committee of the whole, to debate and vote on all subjects, and when the Senate are equally divided, to give the casting vote.

When to act
as governor.

SECTION 17. Should the Governor be impeached, removed from office, die, refuse to qualify, resign, or be absent from the State, the Lieutenant Governor shall exercise all the power and authority appertaining to the office of Governor, until another be duly elected and qualified, or the Governor absent or impeached, shall return or be acquitted.

SECTION 18. Whenever the government shall be administered by the Lieutenant Governor, or he shall fail to attend as Speaker of the Senate, the Senators shall elect one of their own members as Speaker for that occasion. And if, during the vacancy of the office of Governor, the Lieutenant Governor shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the State, the Speaker of the Senate shall, in like manner, administer the government: *Provided*, that whenever a vacancy shall occur in the office of Governor, before the first two years of the term shall have expired, a new election for Governor shall take place to fill such vacancy.

When senate to elect a speaker *pro tempore*.

SECTION 19. The Lieutenant Governor, or Speaker *pro tempore* of the Senate, while he acts as Speaker of the Senate, shall receive for his services the same compensation which shall, for the same period, be allowed to the Speaker of the House of Representatives, and no more; and during the time he administers the government as Governor, shall receive the same compensation which the Governor would have received, had he been employed in the duties of his office.

Lieutenant governor, his compensation.

SECTION 20. If the Lieutenant Governor shall be called upon to administer the government, and shall, while in such administration, resign, die, or be absent from the State during the recess of the General Assembly, it shall be the duty of the Secretary of State, for the time being, to convene the Senate for the purpose of choosing a Speaker.

On death of Lieutenant governor the secretary of state to convene the senate.

SECTION 21. The Governor shall nominate, and, by and with the advice and consent of the Senate, appoint a Secretary of State, who shall be commissioned during the term for which the Governor was elected, if he shall so long behave himself well. He shall keep a fair register, and attest all the official acts of the Governor, and shall, when required, lay the same, and all papers, minutes, and vouchers, relative thereto, before either house of the General Assembly; and shall perform such other duties as may be required of him by law.

Secretary of state, appointment and duty.

SECTION 22. Every bill which shall have passed both houses, shall be presented to the Governor. If he approve, he shall sign it; but if not, he shall return it with his objections to the house in which it originated, who shall enter the objections at large upon their journal, and proceed

Mode of passing bills; dissent of governor, &c

Majority of all
elected may pass
a bill, governor
objecting.

When govern-
or to return a
bill.

Orders, resolu-
tions, and votes
to be approved
by governor.

Contested elec-
tions for a gov-
ernor, &c.

Treasurer, aud-
itor, register, &
attorney general
election of, and
term of office.

State officers,
first election of,
when to be held.

to reconsider it. If, after such reconsideration, a majority of all the members elected to that house shall agree to pass the bill, it shall be sent with the objections to the other house, by which it shall likewise be considered, and if approved by a majority of all the members elected to that house, it shall be a law; but in such cases, the votes of both houses shall be determined by yeas and nays, and the names of the members voting for and against the bill, shall be entered upon the journals of each house, respectively. If any bill shall not be returned by the Governor, within ten days (Sundays excepted) after it shall have been presented to him, it shall be a law, in like manner as if he had signed it, unless the General Assembly, by their adjournment, prevent its return; in which case it shall be a law, unless sent back within three days after their next meeting.

SECTION 23. Every order, resolution, or vote, in which the concurrence of both houses may be necessary, except on a question of adjournment, shall be presented to the Governor, and before it shall take effect, be approved by him; or being disapproved, shall be re-passed by a majority of all the members elected to both houses, according to the rules and limitations prescribed in case of a bill.

SECTION 24. Contested elections for Governor and Lieutenant Governor shall be determined by both houses of the General Assembly, according to such regulations as may be established by law.

SECTION 25. A treasurer shall be elected by the qualified voters of the State, for the term of two years; and an Auditor of Public Accounts, Register of the Land Office, and Attorney General, for the term of four years. The duties and responsibilities of these officers shall be prescribed by law: *Provided*, that inferior State officers, not specially provided for in this Constitution, may be appointed, or elected, in such manner as shall be prescribed by law, for a term not exceeding four years.

SECTION 26. The first election, under this Constitution, for Governor, Lieutenant Governor, Treasurer, Auditor of Public Accounts, Register of the Land Office, and Attorney General, shall be held on the first Monday in August in the year 1851.

ARTICLE FOURTH.

Concerning the Judicial Department.

SECTION 1. The judicial power of this Commonwealth, both as to matters of law and equity, shall be vested in one Supreme Court, (to be styled the Court of Appeals,) the Courts established by this Constitution, and such Courts, inferior to the Supreme Court, as the General Assembly may, from time to time, erect and establish.

Judicial power vested in court of appeals, and inferior courts.

CONCERNING THE COURT OF APPEALS.

SECTION 2. The Court of Appeals shall have appellate jurisdiction only, which shall be co-extensive with the State, under such restrictions and regulations, not repugnant to this Constitution, as may, from time to time, be prescribed by law.

Jurisdiction of the court of appeals.

SECTION 3. The Judges of the Court of Appeals shall, after their first term, hold their offices for eight years, from and after their election, and until their successors shall be duly qualified, subject to the conditions hereinafter prescribed; but for any reasonable cause, the Governor shall remove any of them on the address of two-thirds of each house of the General Assembly: *Provided, however,* that the cause or causes for which such removal may be required, shall be stated at length in such address, and on the journal of each house. They shall, at stated times, receive for their services an adequate compensation, to be fixed by law, which shall not be diminished during the time for which they shall have been elected.

Judges, how to be chosen & term of office.

May be removed by address.

Their salaries.

SECTION 4. The Court of Appeals shall consist of four Judges, any three of whom may constitute a Court for the transaction of business. The General Assembly, at its first session after the adoption of this Constitution, shall divide the State, by counties, in four districts, as nearly equal in voting population, and with as convenient limits as may be, in each of which the qualified voters shall elect one Judge of the Court of Appeals: *Provided,* that whenever a vacancy shall occur in said Court, from any cause, the General Assembly shall have the power to reduce the number of Judges and districts; but in no event shall there be less than three Judges and districts. Should a change in the number of the Judges of the Court of Appeals be made, the term of office and number of districts shall be so changed as to preserve the principle of electing one Judge every two years.

To consist of four judges, to be elected by districts.

Number may be reduced.

When districts to be changed.

Judges to be conservators of the peace.

Process to be in name of the commonwealth.

Judges first elected, how long to serve.

Vacancies, how to be filled.

Qualifications of judge of the court of appeals

Where sessions to be held.

When first election of judges & clerk to take place.

SECTION 5. The Judges shall, by virtue of their offices, be conservators of the peace throughout the State. The style of all process shall be, "The Commonwealth of Kentucky." All prosecutions shall be carried on in the name and by the authority of the Commonwealth of Kentucky, and conclude "against the peace and dignity of the same."

SECTION 6. The Judges first elected shall serve as follows, to-wit: one shall serve until the first Monday in August, 1852; one until the first Monday in August, 1854; one until the first Monday in August, 1856, and one until the first Monday in August, 1858. The Judges, at the first term of the Court succeeding their election, shall determine, by lot, the length of time which each one shall serve; and at the expiration of the service of each, an election in the proper district shall take place to fill the vacancy. The Judge having the shortest time to serve shall be styled the Chief Justice of Kentucky.

SECTION 7. If a vacancy shall occur in said Court from any cause, the Governor shall issue a writ of election to the proper district to fill such vacancy for the residue of the term: *Provided*, that if the unexpired term be less than one year, the Governor shall appoint a Judge to fill such vacancy.

SECTION 8. No person shall be eligible to the office of Judge of the Court of Appeals, who is not a citizen of the United States, a resident of the district for which he may be a candidate, two years next preceding his election, at least thirty years of age, and who has not been a practicing lawyer eight years, or whose service upon the bench of any Court of record, when added to the time he may have practiced law, shall not be equal to eight years.

SECTION 9. The Court of Appeals shall hold its sessions at the seat of government, unless otherwise directed by law; but the General Assembly may, from time to time, direct that said Court shall hold its sessions in any one or more of said districts.

SECTION 10. The first election of the Judges and Clerk or Clerks of the Court of Appeals shall take place on the second Monday in May, 1851, and thereafter, in each district as a vacancy may occur, by the expiration of the term of office; and the Judges of the said Court shall be commissioned by the Governor.

SECTION 11. There shall be elected, by the qualified voters of this State, a Clerk of the Court of Appeals, who shall hold his office, from the first election, until the first Monday in August, 1858, and thereafter for the term of eight years from and after his election; and should the General Assembly provide for holding the Court of Appeals in any one or more of said districts, they shall also provide for the election of a Clerk by the qualified voters of such district, who shall hold his office for eight years, possess the same qualifications, and be subject to removal in the same manner as the Clerk of the Court of Appeals; but if the General Assembly shall, at its first or any other session, direct the Court of Appeals to hold its session in more than one district, a Clerk shall be elected by the qualified voters of such district. And the Clerk, first provided for in this section, shall be elected by the qualified voters of the other district or districts. The same principle shall be observed whenever the Court shall be directed to hold its sessions in either of the other districts. Should the number of Judges be reduced, the term of the office of Clerk shall be six years.

Clerk or clerks to be elected—term of service, duties, &c.

SECTION 12. No person shall be eligible to the office of Clerk of the Court of Appeals, unless he be a citizen of the United States, a resident of the State two years next preceding his election, of the age of twenty-one years, and have a certificate from a Judge of the Court of Appeals, or a Judge of the Circuit Court, that he has been examined by the Clerk of his Court, under his supervision, and that he is qualified for the office for which he is a candidate.

Qualifications of clerk, &c.

SECTION 13. Should a vacancy occur in the office of Clerk of the Court of Appeals, the Governor shall issue a writ of election, and the qualified voters of the State, or of the district in which the vacancy may occur, shall elect a Clerk of the Court of Appeals, to serve until the end of the term for which such Clerk was elected: *Provided*, that when a vacancy shall occur from any cause, or the Clerk be under charges upon information, the Judges of the Court of Appeals shall have power to appoint a Clerk *pro tem.*, to perform the duties of Clerk until such vacancy shall be filled, or the Clerk acquitted: *And, provided further*, that no writ of election shall issue to fill a vacancy unless the unexpired term exceed one year.

Vacancy in clerkship—how to be filled.

Mode of conducting elections and making returns to secretary state.

SECTION 14. The General Assembly shall direct, by law, the mode and manner of conducting and making due returns to the Secretary of State, of all elections of the Judges and Clerk or Clerks of the Court of Appeals, and of determining contested elections of any of these officers.

How special court of appeals shall be provided for.

SECTION 15. The General Assembly shall provide for an additional Judge or Judges, to constitute, with the remaining Judge or Judges, a special Court for the trial of such cause or causes as may, at any time, be pending in the Court of Appeals, on the trial of which a majority of the Judges cannot sit, on account of interest in the event of the cause; or on account of their relationship to either party; or when a Judge may have been employed in or decided the cause in the inferior Court.

CONCERNING THE CIRCUIT COURTS.

Circuit courts shall be established.

SECTION 16. A Circuit Court shall be established in each county now existing, or which may hereafter be erected in this Commonwealth.

Jurisdiction.

SECTION 17. The jurisdiction of said Court shall be and remain as now established, hereby giving to the General Assembly the power to change or alter it.

Appeals.

SECTION 18. The right to appeal or sue out a writ of error to the Court of Appeals shall remain as it now exists, until altered by law, hereby giving to the General Assembly the power to change, alter, or modify said right.

General assembly to divide state into 12 districts.

SECTION 19. At the first session after the adoption of this Constitution, the General Assembly shall divide the State into twelve judicial districts, having due regard to business, territory, and population: *Provided*, that no county shall be divided.

Circuit judges to be elected—when and how.

SECTION 20. They shall, at the same time that the judicial districts are laid off, direct elections to be held in each district, to elect a Judge for said district, and shall prescribe in what manner the elections shall be conducted. The first election of Judges of the Circuit Court shall take place on the second Monday in May, 1851; and afterwards on the first Monday in August, 1856, and on the first Monday in August in every sixth year thereafter.

Who may vote for judges.

SECTION 21. All persons qualified to vote for members of the General Assembly, in each district, shall have the right to vote for Judges.

Who shall be eligible as circuit judge.

SECTION 22. No person shall be eligible as Judge of the Circuit Court who is not a citizen of the United States, a

resident of the district for which he may be a candidate two years next preceding his election, at least thirty years of age, and who has not been a practicing lawyer eight years, or whose service upon the bench of any Court of record, when added to the time he may have practiced law, shall not be equal to eight years.

SECTION 23. The Judges of the Circuit Court shall, after their first term, hold their office for the term of six years from the day of their election. They shall be commissioned by the Governor, and continue in office until their successors be qualified, but shall be removable from office in the same manner as the Judges of the Court of Appeals; and the removal of a Judge from his district shall vacate his office.

Circuit judges—their term of office—to be commissioned—how removed.

SECTION 24. The General Assembly, if they deem it necessary, may establish one additional district every four years, but the judicial districts shall not exceed sixteen, until the population of this State shall exceed one million five hundred thousand.

When additional districts may be established.

SECTION 25. The Judges of the Circuit Courts shall, at stated times, receive for their services an adequate compensation, to be fixed by law, which shall be equal and uniform throughout the State, and which shall not be diminished during the time for which they were elected.

Compensation of circuit judges

SECTION 26. If a vacancy shall occur in the office of Judge of the Circuit Court, the Governor shall issue a writ of election to fill such vacancy, for the residue of the term: *Provided*, that if the unexpired term be less than one year, the Governor shall appoint a Judge to fill such vacancy.

Vacancies, how to be filled.

SECTION 27. The Judicial Districts of this State shall not be changed, except at the first session after an enumeration, unless when a new District may be established.

When judicial districts may be changed.

SECTION 28. The General Assembly shall provide by law for holding Circuit Courts, when, from any cause, the Judge shall fail to attend, or, if in attendance, cannot properly preside.

Special circuit courts to be provided for by law

CONCERNING COUNTY COURTS.

SECTION 29. A County Court shall be established in each county now existing, or which may hereafter be erected within this Commonwealth, to consist of a Presiding Judge, and two Associate Judges, any two of whom shall constitute a court for the transaction of business: *Provided*, the General Assembly may at any time abolish the office of

County courts to be established and of whom to consist.

the Associate Judges, whenever it shall be deemed expedient; in which event, they may associate with said court any or all of the Justices of the Peace for the transaction of business.

County court judges to be elected—term of office.

SECTION 30. The Judges of the County Court shall be elected by the qualified voters in each county, for the term of four years, and shall continue in office until their successors be duly qualified, and shall receive such compensation for their services as may be provided by law.

When first election of county court judges to be held, &c.

SECTION 31. The first election of County Court Judges shall take place at the same time of the election of Judges of the Circuit Court. The Presiding Judge, first elected, shall hold his office until the first Monday in August, 1854. The Associate Judges shall hold their offices until the first Monday in August, 1852, and until their successors be qualified; and afterwards elections shall be held on the first Mondays in August, in the years in which vacancies regularly occur.

Who shall be eligible as county court judge.

SECTION 32. No person shall be eligible to the office of Presiding or Associate Judge of the County Court, unless he be a citizen of the United States, over twenty-one years of age, and shall have been a resident of the county in which he shall be chosen, one year next preceding the election.

Jurisdiction of county court.

SECTION 33. The jurisdiction of the County Court shall be regulated by law; and, until changed, shall be the same now vested in the County Courts of this State.

Justices' districts to be laid off—two to be elected in each district, their qualifications.

SECTION 34. Each county in this State shall be laid off into districts of convenient size, as the General Assembly may, from time to time, direct. Two Justices of the Peace shall be elected in each district, by the qualified voters therein, at such time and place as may be prescribed by law, for the term of four years, whose jurisdiction shall be co-extensive with the county; no person shall be eligible as a Justice of the Peace, unless he be a citizen of the United States, twenty-one years of age, and a resident of the district in which he may be a candidate.

County judges and justices to be conservators of the peace—how vacancies shall be filled.

SECTION 35. Judges of the County Court, and Justices of the Peace, shall be conservators of the peace. They shall be commissioned by the Governor. County and district officers shall vacate their offices by removal from the district or county in which they shall be appointed. The General Assembly shall provide, by law, the manner of

conducting and making due return of all elections of Judges of the County Court and Justices of the Peace, and for determining contested elections, and provide the mode of filling vacancies in these offices.

SECTION 36. Judges of the County Court and Justices of the Peace, Sheriffs, Coroners, Surveyors, Jailers, County Assessor, Attorney for the County, and Constables, shall be subject to indictment or presentment for malfeasance or misfeasance in office, or willful neglect in the discharge of their official duties, in such mode as may be prescribed by law, subject to appeal to the Court of Appeals; and upon conviction, their offices shall become vacant.

All county officers liable to indictment, &c., for neglect of duty, &c.

SECTION 37. The General Assembly may provide, by law, that the Justices of the Peace in each county shall sit at the Court of Claims and assist in laying the county levy and making appropriations only.

Justices to sit at the court of claims, &c.

SECTION 38. When any city or town shall have a separate representation, such city or town, and the county in which it is located, may have such separate Municipal Courts, and executive and ministerial officers as the General Assembly may, from time to time, provide.

When cities & towns may have separate municipal courts.

SECTION 39. The Clerks of the Court of Appeals, Circuit, and County Courts, shall be removable from office by the Court of Appeals, upon information and good cause shown. The Court shall be judges of the fact as well as the law. Two-thirds of the members present must concur in the sentence.

For cause the clerks of courts may be removed by court of appeals.

SECTION 40. The Louisville Chancery Court shall exist under this Constitution, subject to repeal, and its jurisdiction to enlargement and modification by the General Assembly. The Chancellor shall have the same qualifications as a Circuit Court Judge, and the Clerk of said Court as a Clerk of a Circuit Court, and the Marshal of said Court as a Sheriff; and the General Assembly shall provide for the election, by the qualified voters within its jurisdiction, of the Chancellor, Clerk, and Marshal of said Court, at the same time that the Judge and Clerk of the Circuit Court are elected for the county of Jefferson, and they shall hold their offices for the same time, and shall be removable in the same manner: *Provided*, that the Marshal of said Court shall be ineligible for the succeeding term.

Louisville chancery court shall exist—qualifications of chancellor and other officers.

City courts of Louisville and Lexington, and all police courts to remain, until changed by law, &c.

In whom general assembly may vest judicial power.

SECTION 41. The City Court of Louisville, the Lexington City Court, and all other Police Courts established in any city or town, shall remain, until otherwise directed by law, with their present powers and jurisdictions; and the Judges, Clerks, and Marshals of such Courts shall have the same qualifications, and shall be elected by the qualified voters of such cities or towns, at the same time, and in the same manner, and hold their offices for the same term as County Judges, Clerks, and Sheriffs, respectively, and shall be liable to removal in the same manner. The General Assembly may vest judicial powers, for police purposes, in Mayors of cities, Police Judges, and Trustees of towns.

ARTICLE FIFTH.

Concerning Impeachments.

Impeachments.

To be tried by senate, and how

Who liable to, and effect of judgment on.

SECTION 1. The House of Representatives shall have the sole power of impeachment.

SECTION 2. All impeachments shall be tried by the Senate. When sitting for that purpose, the Senators shall be upon oath or affirmation. No person shall be convicted without the concurrence of two-thirds of the members present.

SECTION 3. The Governor, and all civil officers shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall not extend further than to removal from office, and disqualification to hold any office of honor, trust, or profit, under this Commonwealth; but the party convicted shall, nevertheless, be subject and liable to indictment, trial, and punishment by law.

ARTICLE SIXTH.

Concerning Executive and Ministerial Officers for Counties and Districts.

Commonwealth's attorney, circuit and county court clerks, county attorney, surveyor, coroner, and jailer to be elected—terms of office.

Who eligible, & qualifications

SECTION 1. A Commonwealth's Attorney for each judicial district, and a Circuit Court Clerk for each county, shall be elected, whose term of office shall be the same as that of the Circuit Judges; also, a County Court Clerk, an Attorney, Surveyor, Coroner, and Jailer, for each county, whose term of office shall be the same as that of the Presiding Judge of the County Court.

SECTION 2. No person shall be eligible to the offices mentioned in this article, who is not at the time twenty-four years old (except Clerks of County and Circuit Courts, Sher-

iffs, Constables, and County Attorneys, who shall be eligible at the age of twenty-one years,) a citizen of the United States, and who has not resided two years, next preceding the election, in the State, and one year in the county or district for which he is a candidate. No person shall be eligible to the office of Commonwealth's or County Attorney, unless he shall have been a licensed practicing attorney for two years. No person shall be eligible to the office of Clerk, unless he shall have procured from a Judge of the Court of Appeals, or a Judge of the Circuit Court, a certificate that he has been examined by the Clerk of his Court, under his supervision, and that he is qualified for the office for which he is a candidate.

SECTION 3. The Commonwealth's Attorney and Circuit Court Clerk shall be elected at the same time as the Circuit Judge—the Commonwealth's Attorney by the qualified voters of the district, the Circuit Court Clerk by the qualified voters of the county. The County Attorney, Clerk, Surveyor, Coroner, and Jailor, shall be elected at the same time, and in the same manner, as the Presiding Judge of the County Court.

When & how
to be elected.

SECTION 4. A Sheriff shall be elected in each county, by the qualified voters thereof, whose term of office shall, after the first term, be two years, and until his successor be qualified; and he shall be re-eligible for a second term; but no Sheriff shall, after the expiration of the second term, be re-eligible, or act as deputy, for the succeeding term. The first election of Sheriffs shall be on the second Monday in May, 1851; and the Sheriffs then elected shall hold their offices until the first Monday in January, 1853, and until their successors be qualified; and on the first Monday in August, 1852, and on the first Monday of August in every second year thereafter, elections for Sheriffs shall be held: *Provided*, that the Sheriffs first elected shall enter upon the duties of their respective offices on the first Monday in June, 1851; and after the first election, on the first Monday in January next succeeding their election.

Sheriffs shall
be elected—term
of office, &c.

SECTION 5. A Constable shall be elected in every Justices' District, who shall be chosen for two years, at such time and place as may be provided by law, whose jurisdiction shall be co-extensive with the county in which he may reside.

Constables to be
elected—term of
office, jurisdic-
tion, &c.

Officers of towns & cities, to be elected.

SECTION 6. Officers for towns and cities shall be elected for such terms; and in such manner, and with such qualifications, as may be prescribed by law.

Vacancies, how to be filled.

SECTION 7. Vacancies in offices under this article shall be filled, until the next regular election, in such manner as the General Assembly may provide.

When new county is erected, officers to be elected.

SECTION 8. When a new county shall be erected, officers for the same, to serve until the next stated election, shall be elected or appointed in such way, and at such times, as the General Assembly may prescribe.

What officers to give bond.

SECTION 9. Clerks, Sheriffs, Surveyors, Coroners, Constables, and Jailers, and such other officers as the General Assembly may, from time to time, require, shall, before they enter upon the duties of their respective offices, and as often thereafter as may be deemed proper, give such bond and security as shall be prescribed by law.

General assembly may provide for election of other officers.

SECTION 10. The General Assembly may provide for the election or appointment, for a term not exceeding four years, of such other county or district ministerial and executive officers as shall, from time to time, be necessary and proper.

County assessor to be elected—term of office.

SECTION 11. A County Assessor shall be elected in each county at the same time and for the same term that the Presiding Judge of the County Court is elected, until otherwise provided for by law. He shall have power to appoint such assistants as may be necessary and proper.

ARTICLE SEVENTH.

Concerning the Militia.

Militia—of whom to consist

SECTION 1. The Militia of this Commonwealth shall consist of all free, able-bodied male persons (negroes, mulattoes, and indians excepted,) resident in the same, between the ages of eighteen and forty-five years; except such persons as now are, or hereafter may be, exempted by the laws of the United States or of this State; but those who belong to religious societies, whose tenets forbid them to carry arms, shall not be compelled to do so, but shall pay an equivalent for personal services.

Staff officers—how appointed

SECTION 2. The Governor shall appoint the Adjutant General, and his other staff officers; the Major Generals, Brigadier Generals, and Commandants of Regiments shall, respectively, appoint their staff officers; and Commandants

of Companies shall appoint their non-commissioned officers.

SECTION 3. All militia officers, whose appointment is not herein otherwise provided for, shall be elected by persons subject to military duty within their respective companies, battalions, regiments, brigades, and divisions, under such rules and regulations, and for such terms, not exceeding six years, as the General Assembly may, from time to time, direct and establish.

All other militia officers to be elected, and by whom.

ARTICLE EIGHTH.

General provisions.

SECTION 1. Members of the General Assembly, and all officers, before they enter upon the execution of the duties of their respective offices, and all members of the bar, before they enter upon the practice of their profession, shall take the following oath or affirmation: I do solemnly swear, (or affirm, as the case may be,) that I will support the Constitution of the United States, and the Constitution of this State, and be faithful and true to the Commonwealth of Kentucky, so long as I continue a citizen thereof, and that I will faithfully execute, to the best of my abilities, the office of _____ according to law; and I do further solemnly swear, (or affirm,) that since the adoption of the present Constitution, I, being a citizen of this State, have not fought a duel with deadly weapons, within this State, nor out of it with a citizen of this State, nor have I sent or accepted a challenge to fight a duel with deadly weapons, with a citizen of this State; nor have I acted as second in carrying a challenge, or aided, or assisted any person thus offending—so help me God.

General oath of office.

SECTION 2. Treason against the Commonwealth shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or his own confession in open court.

Treason defined

SECTION 3. Every person shall be disqualified from holding any office of trust or profit for the term for which he shall have been elected, who shall be convicted of having given or offered any bribe or treat to procure his election.

Bribery & treating.

SECTION 4. Laws shall be made to exclude from office and from suffrage, those who shall thereafter be convicted of

What to exclude from office and suffrage.

Free suffrage
secured.

bribery, perjury, forgery, or other crimes or high misdemeanors. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practices.

Public money—
how to be
drawn and ac-
counted for.

SECTION 5. No money shall be drawn from the Treasury, but in pursuance of appropriations made by law, nor shall any appropriations of money for the support of an army be made for a longer time than two years, and a regular statement and account of the receipts and expenditures of all public money shall be published annually.

Suits against
the state.

SECTION 6. The General Assembly may direct, by law, in what manner, and in what Courts, suits may be brought against the Commonwealth.

Oath—man-
ner of adminis-
tering.

SECTION 7. The manner of administering an oath or affirmation shall be such as is most consistent with the conscience of the deponent, and shall be esteemed by the General Assembly the most solemn appeal to God.

Certain laws
continued in
force.

SECTION 8. All laws which, on the first day of June, one thousand seven hundred and ninety two, were in force in the State of Virginia, and which are of a general nature, and not local to that State, and not repugnant to this Constitution, nor to the laws which have been enacted by the General Assembly of this Commonwealth, shall be in force within this State, until they shall be altered or repealed by the General Assembly.

Compact in-
corporated.

SECTION 9. The compact with the State of Virginia, subject to such alterations as may be made therein agreeably to the mode prescribed by the said compact, shall be considered as part of this Constitution.

Arbitration.

SECTION 10. It shall be the duty of the General Assembly to pass such laws as shall be necessary and proper to decide differences by arbitrators, to be appointed by the parties who may choose that summary mode of adjustment.

Officers—where
to reside and
where to keep
offices.

SECTION 11. All civil officers for the Commonwealth at large, shall reside within the State, and all district, county, or town officers, within their respective districts, counties, or towns, (trustees of towns excepted,) and shall keep their offices at such places therein as may be required by law; and all militia officers shall reside in the bounds of the division, brigade, regiment, battalion, or company, to which they may severally belong.

SECTION 12. Absence on the business of this State, or the United States, shall not forfeit a residence once obtained, so as to deprive any one of the right of suffrage, or of being elected or appointed to any office under this Commonwealth, under the exceptions contained in this Constitution.

When absence shall not be a forfeiture or an exclusion from office.

SECTION 13. It shall be the duty of the General Assembly to regulate, by law, in what cases, and what deductions from the salaries of public officers shall be made, for neglect of duty in their official capacity.

Deduction from salaries.

SECTION 14. Returns of all elections by the people, shall be made to the Secretary of State, for the time being, except in those cases otherwise provided for in this Constitution, or which shall be otherwise directed by law.

Election returns, where made.

SECTION 15. In all elections by the people, and also by the Senate and House of Representatives, jointly or separately, the votes shall be personally and publicly given, *viva voce*: *Provided*, that dumb persons, entitled to suffrage, may vote by ballot.

Votes, *viva voce*, except dumb persons.

SECTION 16. All elections by the people shall be held between the hours of six o'clock in the morning and seven o'clock in the evening.

Hours of election.

SECTION 17. The General Assembly shall, by law, prescribe the time when the several officers authorized or directed by this Constitution to be elected or appointed, shall enter upon the duties of their respective offices, except where the time is fixed by this Constitution.

When officers shall enter upon their duties.

SECTION 18. No member of Congress, nor person holding or exercising any office of trust or profit under the United States, or either of them, or under any foreign power, shall be eligible as a member of the General Assembly of this Commonwealth, or hold or exercise any office of trust or profit under the same.

Who ineligible to an office.

SECTION 19. The General Assembly shall direct, by law, how persons who now are, or who may hereafter become securities for public officers, may be relieved or discharged on account of such securityship.

Securities for officers.

SECTION 20. Any person who shall, after the adoption of this Constitution, either directly or indirectly, give, accept, or knowingly carry a challenge to any person or persons, to fight in single combat, with a citizen of this State, with any deadly weapon, either in or out of the State, shall be deprived of the right to hold any office of honor or profit

Persons who give, accept, or carry a challenge, deprived of the right to hold office.

in this Commonwealth, and shall be punished otherwise in such manner as the General Assembly may prescribe by law.

Governor shall have power, after five years, to pardon persons engaged in a duel.

SECTION 21. The Governor shall have power, after five years from the time of the offense, to pardon all persons who shall have in any wise participated in a duel, either as principals, seconds, or otherwise, and to restore him or them to all the rights, privileges and immunities to which he or they were entitled before such participation. And upon the presentation of such pardon, the oath prescribed in the first section of this article shall be varied to suit the case.

General assembly to appoint persons to revise the statute laws, and to prepare a code of practice

SECTION 22. At its first session after the adoption of this Constitution, the General Assembly shall appoint not more than three persons, learned in the law, whose duty it shall be to revise and arrange the statute laws of this Commonwealth, both civil and criminal, so as to have but one law on any one subject; and also three other persons, learned in the law, whose duty it shall be to prepare a code of practice for the Courts, both civil and criminal, in this Commonwealth, by abridging and simplifying the rules of practice and laws in relation thereto; all of whom shall, at as early a day as practicable, report the result of their labors to the General Assembly, for their adoption or modification.

President of the board of internal improvement to be elected—term of office, &c.

SECTION 23. So long as the Board of Internal Improvement shall be continued, the President thereof shall be elected by the qualified voters of this Commonwealth, and hold the office for the term of four years, and until another be duly elected and qualified. The election shall be held at the same time, and be conducted in the same manner, as the election of Governor of this Commonwealth under this Constitution; but nothing herein contained shall prevent the General Assembly from abolishing said Board of Internal Improvement, or the office of President thereof.

Contested election of certain officers to be provided for.

SECTION 24. The General Assembly shall provide, by law, for the trial of any contested election of Auditor, Register, Treasurer, Attorney General, Judges of Circuit Courts, and all other officers not otherwise herein specified.

General assembly to provide for election returns to be made for all officers.

SECTION 25. The General Assembly shall provide by law for the making of the returns by the proper officers, of the election of all officers to be elected under this Constitution; and the Governor shall issue commissions to the Auditor, Register, Treasurer, President of the Board of Internal Im-

provement, Superintendent of Public Instruction, and such other officers as he may be directed, by law, to commission, as soon as he has ascertained the result of the election of those officers respectively.

SECTION 26. When a vacancy shall happen in the office of Attorney General, Auditor of Public Accounts, Treasurer, Register of the Land Office, President of the Board of Internal Improvement, or Superintendent of Public Instruction, the Governor, in the recess of the Senate, shall have power to fill the vacancy by granting commissions which shall expire at the end of the next session, and shall fill the vacancy for the balance of the time by and with the advice and consent of the Senate.

Vacancies in any of the state offices—how to be filled.

ARTICLE NINTH.

Concerning the Seat of Government.

The seat of government shall continue in the city of Frankfort, until it shall be removed by law: *Provided, however*, that two-thirds of all the members elected to each house of the General Assembly shall concur in the passage of such law.

Seat of government to continue in city of Frankfort.

ARTICLE TENTH.

Concerning Slaves.

SECTION 1. The General Assembly shall have no power to pass laws for the emancipation of slaves without the consent of their owners, or without paying their owners, previous to such emancipation, a full equivalent in money for the slaves so emancipated, and providing for their removal from the State. They shall have no power to prevent immigrants to this State from bringing with them such persons as are deemed slaves by the laws of any of the United States, so long as any person of the same age or description shall be continued in slavery by the laws of this State. They shall pass laws to permit owners of slaves to emancipate them, saving the rights of creditors, and to prevent them from remaining in this State after they are emancipated. They shall have full power to prevent slaves being brought into this state as merchandise. They shall have full power to prevent slaves being brought into this State, who have been, since the first day of January, one thousand seven hundred and eighty-nine, or may

Slaves not to be emancipated without owner's consent.

Immigrants may bring their slaves.

Owners may emancipate on certain conditions.

Introduction of slaves may be restricted.

May provide
for well treat-
ment of slaves.

hereafter be imported into any of the United States from a foreign country. And they shall have full power to pass such laws as may be necessary to oblige the owners of slaves to treat them with humanity; to provide for them necessary clothing and provision; to abstain from all injuries to them, extending to life or limb; and in case of their neglect or refusal to comply with the directions of such laws, to have such slave or slaves sold for the benefit of their owner or owners.

Free negroes
hereafter immi-
grating to this
state deemed
guilty of felony.

SECTION 2. The General Assembly shall pass laws providing that any free negro or mulatto hereafter immigrating to, and any slave hereafter emancipated in, and refusing to leave this State, or having left, shall return and settle within this State, shall be deemed guilty of felony, and punished by confinement in the Penitentiary thereof.

Grand jury not
necessary in
prosecution of
slaves.

SECTION 3. In the prosecution of slaves for felony, no inquest by a grand jury shall be necessary; but the proceeding in such prosecutions shall be regulated by law, except that the General Assembly shall have no power to deprive them of the privilege of an impartial trial by a petit jury.

ARTICLE ELEVENTH.

Concerning Education.

The capital of
the common
school fund to
be held inviolate

SECTION 1. The capital of the fund called and known as the "Common School Fund," consisting of one million two hundred and twenty-five thousand seven hundred and sixty eight dollars and forty-two cents, for which bonds have been executed by the State to the Board of Education, and seventy three thousand five hundred dollars of stock in the Bank of Kentucky; also, the sum of fifty one thousand two hundred and twenty three dollars and twenty nine cents, balance of interest on the School Fund for the year 1848, unexpended, together with any sum which may be hereafter raised in the State by taxation, or otherwise, for purposes of education, shall be held inviolate, for the purpose of sustaining a system of Common Schools. The interest and dividends of said funds, together with any sum which may be produced for that purpose by taxation or otherwise, may be appropriated in aid of Common Schools, but for no other purpose. The General Assembly shall invest said fifty one thousand two hundred and

twenty three dollars and twenty nine cents in some safe and profitable manner; and any portion of the interest and dividends of said School Fund, or other money or property raised for school purposes, which may not be needed in sustaining Common Schools, shall be invested in like manner. The General Assembly shall make provision, by law, for the payment of the interest of said School Fund: *Provided*, that each county shall be entitled to its proportion of the income of said fund, and if not called for, for Common School purposes, it shall be re-invested from time to time for the benefit of such county.

Provision to be made to pay interest.

Each county to be entitled to its proportion.

SECTION 2. A Superintendent of Public Instruction shall be elected by the qualified voters of this Commonwealth, at the same time the Governor is elected, who shall hold his office for four years, and his duties and salary shall be prescribed and fixed by law.

Superintendent of public instruction to be elected for four years.

ARTICLE TWELFTH.

Mode of Revising the Constitution.

SECTION 1. When experience shall point out the necessity of amending this Constitution, and when a majority of all the members elected to each house of the General Assembly shall, within the first twenty days of any regular session, concur in passing a law for taking the sense of the good people of this Commonwealth as to the necessity and expediency of calling a Convention, it shall be the duty of the several Sheriffs, and other officers of elections, at the next general election which shall be held for representatives to the General Assembly, after the passage of such law, to open a poll for, and make return to the Secretary of State, for the time being, of the names of all those entitled to vote for representatives, who have voted for calling a Convention; and if, thereupon, it shall appear that a majority of all the citizens of this State, entitled to vote for representatives, have voted for calling a Convention, the General Assembly shall, at their next regular session, direct that a similar poll shall be opened, and return made for the next election for representatives; and if, thereupon, it shall appear that a majority of all the citizens of this State, entitled to vote for representatives, have voted for calling a Convention, the General Assembly shall, at their next session, pass a law calling a Convention, to

Mode of revising the constitution.

Number of
members of con-
vention.

consist of as many members as there shall be in the House of Representatives, and no more; to be chosen on the first Monday in August thereafter, in the same manner and proportion, and at the same places, and possessed of the same qualifications of a qualified elector, by citizens entitled to vote for representatives; and to meet within three months after their election, for the purpose of re-adopting, amending, or changing this Constitution; but if it shall appear by the vote of either year, as aforesaid, that a majority of all the citizens entitled to vote for representatives did not vote for calling a Convention, a Convention shall not then be called. And for the purpose of ascertaining whether a majority of the citizens, entitled to vote for representatives, did or did not vote for calling a Convention, as above, the General Assembly passing the law authorizing such vote shall provide for ascertaining the number of citizens entitled to vote for representatives within the State.

Convention to
judge of the e-
lection of its
members.

SECTION 2. The Convention, when assembled, shall judge of the election of its members and decide contested elections, but the General Assembly shall, in calling a Convention, provide for taking testimony in such cases and for issuing a writ of election in case of a tie.

ARTICLE THIRTEENTH.

Bill of Rights.

Declaration of
rights.

That the general, great, and essential principles of liberty and free government may be recognized and established,
WE DECLARE,

Equality of men.

SECTION 1. That all freemen, when they form a social compact, are equal, and that no man, or set of men, are entitled to exclusive, separate public emoluments or privileges from the community, but in consideration of public services.

Absolute pow-
er over life, lib-
erty, and prop-
erty exists no-
where in a re-
public, &c.

SECTION 2. That absolute, arbitrary power over the lives, liberty, and property of freemen, exists no where in a republic—not even in the largest majority.

The right of
property.

SECTION 3. The right of property is before and higher than any constitutional sanction; and the right of the owner of a slave to such slave and its increase, is the same, and as inviolable as the right of the owner of any property whatever.

SECTION 4. That all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, happiness, security, and the protection of property. For the advancement of these ends, they have at all times an inalienable and indefeasible right to alter, reform, or abolish their government, in such manner as they may think proper.

All power in the people.

SECTION 5. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent; that no human authority ought, in any case whatever, to control or interfere with the rights of conscience; and that no preference shall ever be given, by law, to any religious societies or modes of worship.

Liberty of conscience.

SECTION 6. That the civil rights, privileges, or capacities, of any citizen shall in nowise be diminished or enlarged on account of his religion.

Religion.

SECTION 7. That all elections shall be free and equal.

Elections.

SECTION 8. That the ancient mode of trial by jury shall be held sacred, and the right thereof remain inviolate, subject to such modifications as may be authorized by this Constitution.

Trial by jury.

SECTION 9. That printing presses shall be free to every person who undertakes to examine the proceedings of the General Assembly, or any branch of government, and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write, and print on any subject, being responsible for the abuse of that liberty.

Freedom of the press and of speech.

SECTION 10. In prosecutions for the publication of papers investigating the official conduct of officers or men in a public capacity, or where the matter published is proper for public information, the truth thereof may be given in evidence; and in all indictments for libels, the jury shall have a right to determine the law and the facts, under the direction of the court, as in other cases.

To give truth in evidence.

Jury to be the judges of law & fact in libels.

SECTION 11. That the people shall be secure in their persons, houses, papers, and possessions, from unreasonable seizures and searches, and that no warrant to search any place, or to seize any person, or thing, shall issue, without

People to be secure from unreasonable seizures & searches.

describing them as nearly as may be, nor without probable cause, supported by oath or affirmation.

Rights of persons prosecuted criminally.

SECTION 12. That in all criminal prosecutions, the accused hath a right to be heard by himself and counsel; to demand the nature and cause of the accusation against him; to meet the witnesses face to face; to have compulsory process for obtaining witnesses in his favor; and in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage; that he cannot be compelled to give evidence against himself; nor can he be deprived of his life, liberty, or property, unless by the judgment of his peers, or the law of the land.

Information.

SECTION 13. That no person shall, for any indictable offense, be proceeded against criminally, by information, except in cases arising in the land or naval forces, or in the militia when in actual service, in time of war or public danger, or by leave of the court, for oppression or misdemeanor in office.

Twice in jeopardy, and property not to be taken.

SECTION 14. No person shall, for the same offense, be twice put in jeopardy of his life or limb; nor shall any man's property be taken or applied to public use, without the consent of his representatives, and without just compensation being previously made to him.

All courts to be open.

SECTION 15. That all courts shall be open, and every person, for an injury done him in his lands, goods, person, or reputation, shall have remedy by the due course of law, and right and justice administered, without sale, denial, or delay.

Suspending laws.

SECTION 16. That no power of suspending laws shall be exercised, unless by the General Assembly, or its authority.

Excessive bail.

SECTION 17. That excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted.

Prisoners—when bailable.

SECTION 18. That all prisoners shall be bailable by sufficient securities, unless for capital offenses, when the proof is evident or presumption great; and the privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

Habeas corpus.

Imprisonment of debtors.

SECTION 19. That the person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison after delivering up his estate for the benefit of his creditors, in such manner as shall be prescribed by law.

SECTION 20. That no *ex post facto* law, nor any law impairing contracts, shall be made.

Ex post facto
laws.

SECTION 21. That no person shall be attainted of treason or felony by the General Assembly.

Attainder.

SECTION 22. That no attainder shall work corruption of blood, nor, except during the life of the offender, forfeiture of estate to the Commonwealth.

SECTION 23. That the estates of such persons as shall destroy their own lives, shall descend or vest as in case of natural death; and if any person shall be killed by casualty, there shall be no forfeiture by reason thereof.

Felo de eo and
forfeiture.

SECTION 24. That the citizens have a right, in a peaceable manner, to assemble together for their common good, and to apply to those invested with the powers of government, for redress of grievances, or other proper purposes, by petition, address, or remonstrance.

Right of petition

SECTION 25. That the rights of the citizens to bear arms in defense of themselves and the State shall not be questioned; but the General Assembly may pass laws to prevent persons from carrying concealed arms.

Right to bear
arms.

SECTION 26. That no standing army shall, in time of peace, be kept up, without the consent of the General Assembly; and the military shall, in all cases, and at all times, be in strict subordination to the civil power.

Standing army.

SECTION 27. That no soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

Soldiers not
to be quartered.

SECTION 28. That the General Assembly shall not grant any title of nobility, or hereditary distinction, nor create any office, the appointment to which shall be for a longer time than for a term of years.

Nobility, and
limitation of of-
fice.

SECTION 29. That emigration from the State shall not be prohibited.

Emigrants.

SECTION 30. To guard against transgressions of the high powers which we have delegated, WE DECLARE, that every thing in this article is excepted out of the general powers of government, and shall forever remain inviolate; and that all laws contrary thereto, or contrary to this Constitution, shall be void.

Exception out
of the general
powers.

SCHEDULE.

That no inconvenience may arise from the alterations and amendments made in the Constitution of this Commonwealth, and in order to carry the same into complete operation, it is hereby declared and ordained:

CONSTITUTION OF KENTUCKY.

Laws and
rights continued

SEC. 1. That all the laws of this Commonwealth, in force at the time of the adoption of this Constitution, and not inconsistent therewith, and all rights, actions, prosecutions, claims, and contracts, as well of individuals as of bodies corporate, shall continue as if this Constitution had not been adopted.

Oaths, by whom
administered.

SECTION 2. The oaths of office herein directed to be taken may be administered by any Judge or Justice of the Peace, until the General Assembly shall otherwise direct.

No office shall
be superseded by
the adoption of
this constitution

SECTION 3. No office shall be superseded by the adoption of this Constitution, but the laws of the State relative to the duties of the several officers, Legislative, Executive, Judicial, and Military, shall remain in full force, though the same be contrary to this Constitution, and the several duties shall be performed by the respective officers of the State, according to the existing laws, until the organization of the Government, as provided for under this Constitution, and the entering into office of the officers to be elected or appointed under said government, and no longer.

Duty of gene-
ral assembly
that convenes in
1850.

SECTION 4. It shall be the duty of the General Assembly which shall convene in the year 1850, to make an apportionment of the representation of this State, upon the principle set forth in this Constitution; and until the first apportionment shall be made as herein directed, the apportionment of Senators and Representatives among the several districts and counties in this State, shall remain as at present fixed by law: *Provided*, that on the first Monday in August, 1850, all Senators shall go out of office, and on that day an election for Senators and Representatives shall be held throughout the State, and those then elected shall hold their offices for one year, and no longer: *Provided further*, that at the elections to be held in the year 1850, that provision in this Constitution which requires voters to vote in the precinct within which they reside, shall not apply.

Recognizances
heretofore taken

Criminal pro-
secutions.

SECTION 5. All recognizances heretofore taken, or which may be taken before the organization of the judicial department under this Constitution, shall remain as valid as though this Constitution had not been adopted, and may be prosecuted in the name of the Commonwealth. All criminal prosecutions and penal actions which have arisen, or may arise before the re-organization of the judicial department under this Constitution, may be prosecuted to judgment and execution, in the name of the Commonwealth.

“ We, the Representatives of the freemen of Kentucky, in Convention assembled, in their name, and by the authority of the Commonwealth of Kentucky, and in virtue of the powers vested in us, as Delegates from the counties respectively affixed to our names, do ordain and proclaim the foregoing to be the Constitution of the Commonwealth of Kentucky from and after this day.

“ Done at Frankfort this eleventh day of June, in the year of our Lord one thousand eight hundred and fifty, and in the fifty-ninth year of the Commonwealth.”

JAMES GUTHRIE,

President of the Convention, and member from the city of Louisville.

ATTEST :

THO. J. HELM,

Secretary of the Convention.

THO. D. TILFORD,

Assistant Secretary.

NATHAN GAITHER, from the county of Adair.
 GEORGE W. MANSFIELD, from the county of Allen.
 GEORGE W. KAVANAUGH, from the county of Anderson.
 RICHARD D. GHOLSON, from the counties of Ballard and McCracken.
 JOHN T. ROGERS, from the county of Barren.
 ROBERT D. MAUPIN, from the county of Barren.
 JAMES M. NESBITT, from the county of Bath.
 CHARLES CHAMBERS, from the county of Boone.
 GEORGE W. WILLIAMS, from the county of Bourbon.
 RICHARD H. HANSON, from the county of Bourbon.
 ALBERT G. TALBOTT, from the county of Boyle.
 WILLIAM C. MARSHALL, from the county of Bracken.
 JOHN HARGIS, from the counties of Breathitt and Morgan.
 DANIEL J. STEPHENS, from the county of Breckinridge.
 WILLIAM R. THOMPSON, from the county of Bullitt.
 VINCENT S. HAY, from the counties of Butler and Edmonson.
 WILLIS B. MACHEN, from the county of Caldwell.
 EDWARD CURD, from the counties of Calloway and Marshall.
 IRA ROOT, from the county of Campbell.
 JOHN T. ROBINSON, from the counties of Carroll and Gallatin.
 THOMAS J. HOOD, from the counties of Carter and Lawrence.
 JESSE COFFEY, from the county of Casey.
 JOHN D. MORRIS, from the county of Christian.
 NINIAN E. GRAY, from the county of Christian.
 ANDREW HOOD, from the county of Clarke.
 JAMES H. GARRARD, from the counties of Clay, Letcher, and Perry.
 MICHAEL L. STONER, from the counties of Cumberland and Clinton.
 HENRY R. D. COLEMAN, from the county of Crittenden.
 PHILIP TRIPLETT, from the county of Daviess.
 LUTHER BRAWNER, from the counties of Estill and Owsley.
 JAMES DUDLEY, from the county of Fayette.
 ROBERT N. WICKLIFFE, from the county of Fayette.
 WILL. W. BLAIR, from the county of Fleming.
 JAMES M. LACKEY, from the counties of Floyd, Pike, and Johnson.
 THOMAS N. LINDSEY, from the county of Franklin.
 WILLIAM HENDRIX, from the county of Grant.
 RICHARD L. MAYES, from the county of Graves.
 JOHN J. THURMAN, from the county of Grayson.
 THOMAS W. LISLE, from the county of Green.
 HENRY B. POLLARD, from the county of Greenup.
 THOMAS D. BROWN, from the county of Hardin.
 JAMES W. STONE, from the county of Hardin.
 HUGH NEWELL, from the county of Harrison.
 LUCIUS DESHA, from the county of Harrison.
 BENJAMIN COPELIN, from the county of Hart.

ARCHIBALD DIXON, from the county of Henderson.
ELIJAH F. NUTTALL, from the county of Henry.
THOMAS JAMES, from the counties of Hickman and Fulton.
WILLIAM BRADLEY, from the county of Hopkins.
DAVID MERIWETHER, from the county of Jefferson.
WILLIAM C. BULLITT, from the county of Jefferson.
ALEX. K. MARSHALL, from the county of Jessamine.
JOHN W. STEVENSON, from the county of Kenton.
SILAS WOODSON, from the counties of Knox and Harlan.
JAMES P. HAMILTON, from the county of Larue.
JONATHAN NEWCUM, from the counties of Laurel and Rockcastle.
LARKIN J. PROCTOR, from the county of Lewis.
JOHN L. BALLINGER, from the county of Lincoln.
WILLIAM COWPER, from the county of Livingston.
WILLIAM K. BOWLING, from the county of Logan.
JAMES W. IRWIN, from the county of Logan.
JAMES RUDD, from the city of Louisville.
WILLIAM PRESTON, from the city of Louisville.
SQUIRE TURNER, from the county of Madison.
WILLIAM CHENAULT, from the county of Madison.
GREEN FORREST, from the county of Marion.
PETER LASHBROOKE, from the county of Mason.
JOHN D. TAYLOR, from the county of Mason.
THOMAS J. GOUGH, from the county of Meade.
THOMAS P. MOORE, from the county of Mercer.
JOHN S. BARLOW, from the county of Monroe.
RICHARD APPERSON, from the county of Montgomery.
ALFRED M. JACKSON, from the county of Muhlenburg.
BEN. HARDIN, from the county of Nelson.
CHARLES A. WICKLIFFE, from the county of Nelson.
BENJAMIN F. EDWARDS, from the county of Nicholas.
HOWARD TODD, from the county of Owen.
JOHN H. McHENRY, from the counties of Ohio and Hancock.
JOHN WHEELER, from the county of Pendleton.
JAMES D. ALLCORN, from the county of Pulaski.
NATHAN McCLURE, from the county of Russell.
WILLIAM JOHNSON, from the county of Scott.
BEVERLY L. CLARKE, from the county of Simpson.
ANDREW S. WHITE, from the county of Shelby.
GEORGE W. JOHNSTON, from the county of Shelby.
MARK E. HUSTON, from the county of Spencer.
WILLIAM N. MARSHALL, from the county of Taylor.
FRANCIS M. BRISTOW, from the county of Todd.
ALFRED BOYD, from the county of Trigg.
WESLEY J. WRIGHT, from the county of Trimble.
IGNATIUS A. SPALDING, from the county of Union.
CHASTEEN T. DUNAVAN, from the county of Warren.
JAMES S. CHRISMAN, from the county of Wayne.
THOMAS ROCKHOLD, from the county of Whitley.
JOHN L. WALLER, from the county of Woodford.
CHARLES COOPER KELLY, from the county of Washington.

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